Audit Guide for Consultants

August 1999



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Foreword

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This second edition of the *Audit Guide for Consultants* has been prepared for use by consulting organizations as a basic primer to better understand the Washington State Department of Transportation (WSDOT) external audit process. Communication of rules, regulations, policies, and procedures used by WSDOT management and the Audit Office can assist firms in understanding the role of the audit organization and how costs are viewed by the auditors.

While much of what is included in the manual is directed toward engineering and architecture firms doing business with WSDOT, the concepts discussed can be used by other types of organizations.

Updating the guide is a continuing process and revisions will be issued periodically. Questions, observations, and recommendations are invited. For clarification of the content of the manual, contact the WSDOT Audit Office, External Audit Branch.

Wayne H. Donaldson Audit Director WSDOT Audit Office

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Chapter 1 Introduction

Chapter 1 Introduction

WSDOT uses the services of consultants to assist in program delivery. An area that often raises questions for people in the consultant community, and management within the Washington State Department of Transportation (WSDOT), is the area of AUDIT.

Communication of rules, regulations, policy, and procedures can assist individuals in understanding the role of an organization. Providing information relating to audit issues is the primary purpose of this document.

About This Manual

This manual is intended to be a basic primer for understanding the WSDOT external audit process. To the extent possible, accounting and auditing theory will not be discussed. Numerous books are available which the reader can obtain to learn about those two subjects.

Success and Words of Wisdom

Success can be measured in a number of ways. For the WSDOT Audit Office, success may be measured by the impact this manual will have on the readers.

While we cannot say that a firm will be always be successful in dealing with and understanding audit groups, we offer these words:

- Record business income and expenditures in a hand-posted or computerized accounting system.
- Keep time sheets, original invoices, rental agreements, and all source (original) documentation used as a basis for any billing to WSDOT.
- Read and understand the agreement entered into with WSDOT and the implications of the method of payment identified in the agreement and the federal and state criteria cited in the agreement.
- Just because an item of cost is an acceptable business expense by the Internal Revenue Service, doesn't mean it is allowable for reimbursement purposes. For instance, the IRS rate for vehicle mileage is usually higher than the rate allowed by the Federal Acquisition Regulation System (FARS).
- WSDOT uses FARS as a primary basis for determining the allowability, allocability, and reasonableness of incurred costs.

Note: By definition, a WSDOT auditor cannot tell an organization how to compile information, or in what specific format. In other words, WSDOT cannot create or establish a firm's accounting system. In theory and practice, the auditors are an objective third party, conducting audits of agreements or contracts entered into between WSDOT management, and public or private organizations.

The information contained in this guide is based on the knowledge and experience of the auditors, the most often asked questions by someone being audited, and the observations of the auditors made while conducting their work.

Included in this guide are examples of schedules, time sheets, ledger sheets, and other accounting type records or documents. These examples are for discussion purposes only. The use of the same format or type of document does not guarantee the acceptance or eligibility of costs.

The following is a summary of topical areas included in this guide.

Chapter 1	Introduction
Chapter 2	Definitions
Chapter 3	Audit Involvement in the Agreement Process
Chapter 4	Using This Guide
Chapter 5	Labor Costs
Chapter 6	Overhead Costs
Chapter 7	Direct Nonsalary Costs
Chapter 8	Fixed Fee
Chapter 9	Subconsultants
Chapter 10	Record Retention for Consultants
Chapter 11	Task Assignment Agreements
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Chapter 13	Development of Charge-Out Rates
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Chapter 15	Single Audit Act
Chapter 16	Auditor's Review of Internal Control
Chapter 17	WSDOT Standard Agreements
Chapter 18	Conflict of Interest — Who Me?
Chapter 19	Sole Proprietorships — Wage and Billing Rates
Chapter 20	Billing Rates — AIHR, Sole Proprietor, Partnerships
Chapter 21	Field Office Overhead Rates
Chapter 22	Advance Agreement on Costs
Chapter 23	Resolution Procedures
Chapter 24	Examples of Forms
Chapter 25	Audit Criteria
Chapter 26	FARs Subpart 31 — Contract Cost Principles and Procedures

Chapter 2 Definitions

Chapter 2 Definitions

The following terms are used throughout this guide. We suggest that the reader become familiar with these terms and the associated WSDOT Audit Office definition.

Actual Cost Agreement

The name Actual Cost Agreement does not mean that a consultant will be reimbursed for all actual costs incurred for performing a job. Costs are reimbursed subject to the limitations described in the agreement, contract, or specified criteria. These limitations can be very restrictive. An example is interest on borrowed money. This is a cost of doing business, yet it is not reimbursable as an actual cost of doing business.

Actual Costs

Amounts determined on the basis of costs incurred and supported by original source documentation, as compared to forecasted costs, or costs thought to have been incurred, or costs based on historical averages.

Administrative Expenses

Costs which are not directly identified with any one item of work, but when taken as a whole, support or contribute to all activities of a firm.

Advance Agreement

An understanding included in an agreement by the contracting officer and the consultant as to the treatment of special or unusual costs not already included in FARs. The agreement must be in writing, executed by both the contracting parties, and incorporated into applicable current and future contracts. An advance agreement shall contain a statement of its applicability and duration. See 48 CFR 31.109.

Agreement

A contract. A binding, legal, document which identifies the deliverable goods and services being provided, under what conditions, and the method of payment for such services. The document may include federal criteria and state requirements which will have to be adhered to by the state and the consultant. The document will usually indicate start and finish dates, record retention requirements, and other pertinent information relative to the actual work to be performed.

All-Inclusive Hourly Rate Agreement

An agreement using an hourly rate developed for billing purposes which may include a firm's actual direct labor cost, overhead rate allowed or negotiated, and negotiated profit margin. Provisional hourly rates generally are temporary and will

be adjusted by an audit. Negotiated hourly rates may be used for the life of an agreement, or may be adjusted from time to time depending on the agreement provisions.

Allocable

A cost is allocable (to an agreement or cost of work being performed for the government) if it benefits both the agreement and other work of the firm and the cost can be distributed in reasonable proportion to the benefits of incurring that cost.

Allowable (Cost)

An item of cost which can be billed directly as a project cost or indirectly as an overhead cost by the consultant.

Audit Cycle

The series of steps auditors go through in completing their assigned work. The process includes a review of a firm's permanent file maintained by the Audit Office, preliminary audit work including scheduling of billed costs, arranging an appointment to conduct the audit, entrance conference, field work, review of a firm's documentation, exit conference, report write up, submittal of draft report to auditee for comment, and issuance of the final report.

Audit Resolution Process

The process WSDOT management and the auditee go through in resolving audit findings. It may involve negotiation of a settlement, legal counsel, and court procedures.

Audit Trail

The auditable record left by a transaction in a firm's accounting records from original source document into subsidiary ledgers through the general ledger and into financial statements and invoices.

Auditee

The firm or person being audited.

Billing Rate

The hourly rate being charged for work on an agreement. For a cost plus fixed fee agreement, the billing rate will be exactly the same as the employee's actual payroll rate. For an all-inclusive hourly rate agreement, the billing rate will include the actual payroll rate plus an overhead percentage plus an amount for fee.

Close Without Audit

All agreements and subagreements over \$100,000 are required to have a post audit. Agreements less than \$100,000 will be reviewed at the WSDOT Audit Office and usually will be closed without a formal audit.

Common Control

Exists in related party transactions when business is conducted at less than arm's length between businesses and/or persons that have a family or business relationship. Examples are transactions between family members, transactions between subsidiaries of the same parent company, or transactions between companies owned by the same person or persons.

Contracting Officer

A title sometimes used in private and public sectors to indicate the person having authority to enter into a contract or agreement for goods and services.

Corporation

A business structure where stock is made available for purchase. The firm may have a president, vice president, treasurer, and secretary. Anyone working for the corporation is usually paid an hourly wage rate or is salaried. In theory, the liabilities of the individual stock owners are limited in this type of business structure. (Seek a good attorney for information on this subject.)

Cost Center

A grouping of incurred costs identified with a specific final cost objective.

Cost of Money

Facilities capital cost of money in an imputed cost determined by applying a costof-money rate to facilities capital employed in contract performance. It is included in a firm's overhead rate.

Cost Plus Fixed Fee Agreement

An agreement in which all the cost factors except fee are actual cost. The fixed fee is a set dollar amount in the agreement.

Cost Principles

The underlying basis for determining how costs should be recorded when they are allowable or unallowable, and the specific basis for treating various costs as either allowable or unallowable.

Courtesy Audit

An audit performed for another state, another state agency, or city or county government. The audit could be a preaward, interim or post, with the requesting agency paying for the cost of the audit.

Direct Cost

Any cost that can be identified specifically with a particular final cost objective, i.e., a project related cost. Direct costs would include labor, materials, and reimbursables incurred specifically for an agreement. It is irrelevant whether or not the costs are actually billed. All direct labor costs must be included in the direct labor base. All costs for lump sum agreements must be included in direct costs.

Entrance Conference

A meeting between the auditor and the auditee, at which time the purpose and scope of the audit are discussed.

Exit Conference

A meeting held after the auditor completes field work at the auditee's place of business. Topics of discussion are preliminary findings of the audit, which are subject to change and revision during the supervisory work paper review process, and/or a formal request for the auditee's response to the draft audit report.

Federal Acquisition Regulations (FARs) Code of Federal Regulations No. 48

Sets the criteria for allowable and unallowable costs for federally funded agreements. Since WSDOT does not have a separate state regulation, we apply FARs to all agreements regardless of the source of funding.

Finding

A statement of noncompliance with the terms of an agreement. A finding includes the condition, criteria, cause, effect, and a recommendation for correction.

General Administrative Expenses

Any management, financial, and other expense which is incurred by or allocated to a business unit, and which is for the general management and administration of the business as a whole.

Indirect Cost

Any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or an intermediate cost objective. Consultants recover their indirect costs in their overhead rate.

Ineligible Costs

A firm's expenditures for labor, materials, equipment, equipment rental rates, or any other cost found to be unallowable for overhead purposes.

Interim Audit

An audit, which may be of limited scope, during the life of an agreement. The purpose is to determine the actual allowable costs to date, review and adjust a firm's overhead rate, and audit a prime consultants subcontracts. This audit follows a standard audit plan.

Internal Control

The plan of organization and methods and procedures adopted by management to ensure that its goals and objectives are met; that resources are used consistent with laws, regulations, and policies; that resources are safeguarded against waste, loss, and misuse; and that reliable data are obtained, maintained, and fairly disclosed in reports.

Lump Sum Agreement

An agreement where the method of payment for delivery of goods and services is one set amount that includes salaries, overhead, and profit with no adjustments. Once the lump sum amount is agreed upon, the services or goods must be provided regardless of the actual cost for the consultant.

Negotiated Hourly Rate Agreement

An agreement in which hourly billing rates that include labor, overhead, and fee are negotiated in advance and are listed for a 12-month period.

Overhead Expenses

All allowable general administrative expenses and fringe benefit costs (sometimes called payroll additives). Depending on the size of the firm, these costs may or may not be separately identified on a schedule of overhead costs. (See Chapter 6.)

Overhead Rate

A computed rate developed by adding all of a firm's general and administrative costs, plus fringe benefit costs together, then dividing by a base value, usually direct labor, to get a percentage. This rate is applied to direct labor to allow a firm to recover the share of indirect costs allowable to the agreement.

Partnership

A business with two or more co-owners, who may or may not have established salaries. The liabilities of the firm are the owners' responsibility. (Seek a good attorney for information on this subject.) Owners may be treated the same as sole proprietors by the auditors regarding the establishment of a salary rate.

Post Audit

An audit done after the completion of all work by a consultant. Its scope may include all billed costs by the prime consultant and/or any subconsultants providing services. This audit follows a standard audit plan.

Preaward Audit

An audit conducted on behalf of WSDOT management for the purpose of validating financial information supplied by a potential consultant. The audit may require an on site visit or information may be reviewed at the Audit Office in Olympia. Upon completion, the information is provided to the WSDOT contracting officer in an audit report for use during agreement negotiations. This audit follows a special preaward audit plan.

Provisional Hourly Rate Agreement

An agreement in which hourly billing rates that include labor, overhead, and fee are negotiated in advance, but are subject to adjustment after an audit determines actual labor and overhead rates.

Reasonable Cost

A cost, if in its nature and amount, does not exceed that which would be incurred by a prudent person in the conduct of competitive business.

Record of Negotiation

A summary memorandum prepared by the WSDOT contracting officer regarding the reconciliation between the consultant's proposal and the WSDOT estimate. It includes contract rate negotiations, disposition of significant matters in the preaward audit report, and reasons why audit recommendations were not followed. It is required by 48 CFR 42.706(b).

Single Audit

In theory, an audit which satisfies the needs of all parties involved with funding or doing business with an organization, either private or public. In reality, this is rarely the case because funding agencies still request that their audit groups obtain specific information peculiar to their operations policies and procedures.

Sole Proprietorship

A business with one owner. From an audit standpoint, this person may not have an established salary, but instead may rely on draws from the profits of the firm to obtain their payment for services.

Source Documentation

Original documents, including but not limited to time sheets, invoices, room receipts, rental slips, gasoline tickets, canceled checks, tax returns, insurance policies, minutes of corporate meetings, etc., which support the costs recorded in the firm's accounting ledgers and which may be used for billing purposes to the government or for income tax purposes.

Task Assignment Agreements

An agreement without a definite description of work, but with a specified time period. Tasks which require the consultant's expertise are assigned as needed. Each task will have its own maximum payable amount. The total amount paid on all of the tasks cannot exceed the total amount of the agreement.

Unallowable (Cost)

An item of cost which cannot be billed directly or indirectly by a consultant. These types of costs, if found during an audit will be purged from the costs billed directly, or from those billed indirectly via an overhead rate or cost center. When an unallowable cost is incurred, its directly associated costs are also unallowable.

Verify

The act of tracing a transaction from a ledger back to the original supporting document.

Work Sheet

The consultant's written documentation to support in-house charge-out rates for such things as computer time, photocopies, and billing rates where payroll data is not available. It will show all costs going into the charge-out rate and how revenues from the charges are recorded in the firm's general ledger.

Chapter 3

Audit Involvement in the Agreement Process

Audit Involvement in the Agreement Process

Chapter 3

Why Audit

WSDOT conducts cost and compliance audits for management to ensure that funds paid to outside organizations are eligible and that the firm complied with federal, state, and WSDOT rules, regulations, and the terms of the contract or agreement.

What is Auditing

Auditing can be compared to a road map. Driving from Olympia to Spokane, a person can identify a series of roads which allows you to drive from Point A to Point B. When a firm bills WSDOT for services, the auditor expects to identify the item of cost, by finding the supporting document to substantiate each item of cost billed. This audit trail, just like the dots on a map that connect one road to another allowing you to drive from Spokane to Olympia is what the auditor is expecting to find, i.e., an Audit Trail (road map) which leads from the costs billed to WSDOT (Point A) to those original documents (Point B) such as time sheets, invoices, and work sheets used for developing overhead rates, etc., which support the billed costs.

Audit and the Consultant Process

To understand how audit fits into the WSDOT consultant process, we will first look at the consultant selection process through product delivery.

Note: This process is simplified for example only, and may not relate to each consultant selection process.

- WSDOT identifies a need in this case, a new bridge.
- Decision is made whether design work is performed in-house or contracted out.
- WSDOT advertises a Request for Proposal.
- A number of firms respond with proposals.
- Consultant selection interviews take place.
- Based on the consultant interviews, a firm is selected.
- Audit Office Involvement WSDOT management requests a preaward audit.
 Its purpose is to determine that the firm has a cost accounting system capable
 of recording and tracking income and expenditures, and to verify the firm's
 labor rates, overhead, and direct nonsalary costs.
- Audit Office conducts preaward audit and issues a report to WSDOT management.
- Contract negotiations are finalized, agreement is executed, and work by the consultant begins.

- Work progresses, with the consultant submitting monthly billings for work performed to a region or the Olympia Service Center.
- Fourteen months into the project, WSDOT management requests an interim audit. Audit Office conducts audit and issues a report to the consultant and WSDOT management. Possible recommendations include: overhead rate be increased or decreased for the next billing cycle; unsupported labor costs, due to miscoding of project time sheets, be refunded to WSDOT.
- WSDOT management resolves interim audit findings, as work by the consultant continues.
- Two years and three months after entering into the agreement with WSDOT, the consultant's work is completed.
- Three months later, or two years and six months after consultant started work, the final billing is paid by WSDOT.
- WSDOT Audit Office now has up to three years time to conduct a final audit of the consultant and/or subconsultants records. This time limit is usually established in the agreement between WSDOT and the consultant and also is specified in FARs.

Note: This means that if the agreement started on January 1, 1997, and final payment was made to the consultant on June 1, 1999, the consultant and any subconsultants must retain all source or original documentation until at least June 1, 2002.

After completion of the post audit, the report is provided to the consultant and WSDOT management for audit resolution.

What Triggers an Audit

An audit may be conducted at any time during the life of an agreement. WSDOT management can make special requests for audits. The WSDOT Audit Office will normally conduct an interim audit of a consultant agreement, when the length of the agreement exceeds two years.

Interim Audits

Audits done after a portion of the work has been done. This type of audit is usually done only on very large agreements or on agreements that extend over a long time period.

Post Audits

Post audits, after completion of work, are conducted on those agreements which exceed \$100,000, but may also be conducted on those under \$100,000 at management's request or at the discretion of the Audit Office.

Preaward Audits

Preaward audits will be conducted on any agreement where the proposal exceeds \$250,000 in total costs, or at the request of a WSDOT contracting officer on any proposal.

Agreements Closed Without Audit

When the total cost of a completed agreement is less than \$100,000, it will usually be closed without audit. But an audit could be conducted at management's request or at the discretion of the Audit Office.

Chapter 4 Using This Guide

Chapter 4

Using This Guide

Information included in this guide will follow the format of a firm's progress billing to WSDOT. That is, we will provide an overview of items typically included in a progress billing to WSDOT. In addition, we will briefly discuss the standard WSDOT consultant agreements.

This simplified overview will provide the corresponding chapter where more detailed information about that topic can be found.

Not every topic is discussed in this guide. Every time the audit office sees the light at the end of the tunnel, a new or unusual situation or set of circumstances occurs, causing the Audit Office to rethink a particular definition or procedure.

After beginning work, a consultant will usually bill the department for services in a format which may be similar to the example below:

Simplified Overview of a Progress Billing

Direct Labor — Chapter 5

Overhead — Chapter 6

Direct Nonsalary Costs — Chapter 7

Computer Time, Travel Costs, Subconsultants Costs, Copying

Fixed Fee — Chapter 8

All of these costs must be supported in the books or ledgers of the firm, and be backed by original or source documentation (time sheets, invoices, etc.). For any cost that you expect to be reimbursed, a firm must retain the source documents for at least three years after the prime consultant receives final payment from WSDOT for services rendered.

The Audit Office has found that department managers may require a variety of supporting documentation, i.e., copies of various bills, etc. We recommend that if a firm must submit this type of information, send copies, not the original document. Sending copies of supporting documents with invoices is not a requirement of the Audit Office. During interim and post audits, we will ask to see original documents.

The next four chapters will discuss the costs typically billed to WSDOT, the basis for billing rates, and recommended documentation to provide audit support.

Chapter 5 Labor Costs

Chapter 5 Labor Costs

This chapter discusses:

- · Labor Costs in General
- Impact of Business Structure on Labor
- Supporting Labor Costs
- Example of a Time Sheet
- Sole Proprietors' Wage Rate and Billing Rates
- · Billing Rates

Labor Costs in General

Auditors look at labor costs in at least three different ways. They verify direct labor costs billed on a project, indirect labor costs accumulated in a firm's overhead rate, and total direct labor dollars used as a basis for determining a firm's overhead rate.

Auditors make the distinction between labor costs and market billing rates for services provided on an hourly basis. A billing rate includes overhead, profit, and salary while a wage or labor rate is a raw labor cost.

A firm must be able to identify direct labor, i.e., labor recorded directly to all projects, from indirect labor, i.e., that labor commonly incurred for general administration of the organization, including accounting, marketing, sales, budget, and administrative management of the organization. It should be noted that all direct labor recorded for projects goes into the direct labor base regardless of whether it is billed to the client or not.

If compensatory time for extra work or overtime pay is granted, the costs associated with this activity must be segregated from direct labor costs. The reasoning is that the fringe benefits and in part, other related overhead costs of a firm do not relate directly to the overtime hours expended while working on projects. For example, the depreciation cost of a building for a given time period is the same whether people work 40 hours per week or 60 hours per week.

Impact of Business Structure on Labor

The type of business structure may impact the development of actual labor costs, versus those that are billed. Typical business structures include sole proprietorships, partnerships, public and private corporations, and government agencies.

Under most circumstances, an employee is hired at a wage rate or salary level that is used in determining a labor rate. WSDOT uses 2,080 hours as the number of hours in a year for computing hourly labor rates. If a firm is using a standard work week of less than 40 hours, they must be prepared to show that their timekeeping and billing are based on their standard.

Supporting Labor Costs

Labor costs need to be supported by monthly, weekly, or daily time sheets for project people (those charging direct to a job) and may also be used for administrative or indirect type labor employees.

Example of a Time Sheet

In the example shown below, a firm would bill, and the WSDOT auditor would expect to see 37 hours charged to WSDOT and 18 hours of work charged to XYZ Co. for services provided.

Time sheets must be retained for at least three years after final project payment to the consultant. If in this example, the time sheet is for a subconsultant who completed work two years before the prime was paid for all work performed, the subconsultant would have to retain the time slip for at least five years.

The method for recovering vacation, sick leave, administrative time, and overtime will be discussed in the Overhead section of this guide.

Name: Smith, John	SSN 123-45-6789						Period Ending 1/15/00							
Job Description M	T	W	TH	F	S	S	M	T	W	TH	F	S	S	TOTAL
	4 2		4 2	2 4	2 4			8	4	4 2	5	4		37 18
VACATION SICK LEAVE	2 8	8	2	2	2			8	2	3	4 8	8		11 10 4 80
SIGNED <u>JOHN SMIT</u>						SU	PER	VIS	OR <u>C</u>	ON	WAY	Z TV	<u>WIDDY</u>	

Sole Proprietors' Wage Rate and Billing Rates

In sole proprietorships, it can be difficult to determine hourly wage rates because payroll to owners may be based on company profits and draws on those profits. Because of fluctuations in work performed and resulting billings and collections, an owner may not take any salary in a month, but then recoup in later months. In this situation, the wage rate will be calculated from total annual draws.

Sole proprietorships and partnerships should realize that WSDOT is under no obligation to subsidize operating losses by paying higher than actual wage rates. This especially should be considered when the amount of draws are being determined.

Also, since some small businesses are worked only part time, it is extremely important for the owners and employees to keep detailed time records of all direct and indirect hours worked.

Once an annual average hourly rate is determined, billing rates will be based on the calculated rate in the same manner as if the rate was a regular hourly payroll rate.

See Chapter 19 for details on determining wage rates and Chapter 20 for billing rates.

Billing Rates

Billing rates must use actual payroll rates as their base. In all WSDOT agreement types, payment for direct labor is based on actual payroll rates, by employee. Proposals may estimate total labor by using average wage rates, but billing for actual services must be based on each employees actual payroll rate.

A billing rate, such as used in a provisional or negotiated hourly rate agreement, has three components:

- Direct labor
- Overhead (as a percentage of direct labor)
- Fee (either a fixed amount or a percentage of direct labor)

These and other labor billing rates are discussed further in Chapter 20.

Chapter 6 Overhead Costs

Chapter 6

Overhead Costs

This chapter discusses:

- · Overhead Costs
- The Development of an Overhead Schedule
- · Costs Normally Included in a Firm's Overhead
- · Unallowable Costs Included in Overhead
- Costs Which Create the Most Confusion for Consultants

Overhead Costs in General

Overhead costs are those general expenses incurred during the normal course of operating a business. At times, these costs may be called General and Administrative, Fringe Benefit Costs, Overhead, or Payroll burden.

The majority of firms doing business with WSDOT lump these business costs together into a firm wide overhead rate. For management purposes, larger firms may segregate the costs into the groups as previously identified. The reasons for this distinction vary; therefore, we reference you to the nearest library or cost accounting textbook. The primary reason is for the management of business costs at the lowest level possible.

WSDOT Auditors use the Federal Acquisition Regulations (FARs) to assist in establishing overhead costs which may be recovered in a firm's overhead rate. *Note:* We said may be recovered!

The reader needs to understand the distinction between overhead costs and overhead cost categories that can be included in an overhead rate.

This includes the fact that costs accepted by the Internal Revenue Service may not be acceptable for contracting purposes with WSDOT because IRS and FARs regulations are different.

This computed rate is normally applied to direct labor, ultimately to be recovered against the agreement.

FARs Part 31 lists approximately 52 cost categories including direct and indirect costs, interest expense, et al. What follows is a discussion of some of those overhead costs which can and cannot be included in a firm's overhead rate and the basis.

Words of Wisdom

Document, Document — This cannot be over emphasized. If you want to recover your overhead costs to the greatest extent possible, document the costs incurred and have support showing payment for claimed expenditures.

For more detailed reading on the cost principles, we reference the reader to Chapter 26 of this guide which contains the FARs, Part 31 Cost Principles, applicable to commercial agreements.

Development of an Overhead Schedule

As you may have guessed by now, an overhead schedule can only be developed if the firm has taken the time to segregate expenses by some logical cost grouping identified in the accounting ledgers. Expenditures in these cost groups must be segregated by direct project costs and indirect overhead costs. These costs are then summarized on a monthly, quarterly, or annual basis. On an annual basis, they might look like the example shown on the following page.

This example is typical of the costs found in many organizations and will be used as the basis for further discussion in the remainder of this chapter.

The purpose of providing a sample overhead schedule is to establish a starting point for a new consultant or subconsultant who is not familiar with developing an overhead schedule.

Consultants and subconsultants who have done business with WSDOT in the past are familiar with the required format. In addition, it makes good business sense for consultants to know each year the overhead costs for their business, not only for WSDOT agreements but any other contracts they participate in.

From our experience, there are a variety of ways consultants present overhead schedules. They are acceptable as long as they present information in a format we can use and audit. WSDOT Audit accepts overhead schedules for the latest complete fiscal year. The dollar amounts on the overhead schedule should agree with financial statements. Documents to support the overhead schedule should be available for inspection. We review the support documents for compliance with 48 CFR 31 (Code of Federal Regulations Federal Acquisition Regulations System Part 31 Contract Cost Principles and Procedures). We use other parts of 48 CFR as well but Part 31 is the primary one. In addition, certain WSDOT directives (i.e., D 13-50 Travel Expenses) are used for audit criteria.

Not all cost categories will be discussed in this chapter. The reader may be referenced to another location where the cost has been previously discussed. In some cases, we believe the title of the cost category is adequate regarding the classification of the cost item.

Please Note: There is a difference between the rules and regulations used by the Internal Revenue Service for tax purposes and those used for government contracting regarding the eligibility of business costs!

Sheet 1

XYZ Corporation Overhead Schedule December 31, 1998

Description	Stated Amount	Adjustments	Ref.	Audited Amount	Percent
Direct Labor Base	\$1,220,565	\$ 26,703	L	\$1,247,268	
Overhead Costs					
Vacation Leave	\$ 161,578			\$ 161,578	12.95%
Holidays	54,250			54,250	4.35
Sick Leave	24,972			24,972	2.00
Payroll Taxes	147,870			147,870	11.86
Employee Insurance	90,043			90,043	7.22
Unemployment Taxes	17,528			17,528	1.41
Worker's Comp	7,564			7,564	0.61
401(k) Plan Contributions	32,752			32,752	2.63
401(k) Plan Administration	7,246	\$ 430	В	7,676	0.62
Bonuses	300,201	(3,588)	D	296,613	23.78
Rent	142,947			142,947	11.46
Office Maintenance	17,785			17,785	1.43
Telephone	18,604	(1,232)	F	17,372	1.39
Principal's Salaries	126,130	(5,650)	В	120,480	9.66
Clerical Salaries	80,006			80,006	6.41
Administrative Salaries	391,496	(28,514)	C,L	362,982	29.10
Accounting	71,006	(5,570)	Ε	65,436	5.25
Business Taxes	65,386			65,386	5.24
Insurance	101,571	(7,590)	Ο	93,981	7.53
Warranty Service	3,035	(3,035)	Ν	0	0.00
Employee Recruiting	18,798	(1,350)	F,G	17,448	1.40
Printing, Stationary, Etc.	82,585	(4,490)	F,I	78,095	6.26
Computer Expenses	59,967	(52,741)	B,C	7,226	0.58
Computer Administration	41,394	(34,944)	B,C	6,450	0.52
Auto and Travel	35,749	(24,939)	B,K	10,810	0.87
Fees, Dues, Meetings, Etc.	31,186	(552)	G	30,634	2.46
Subscriptions and Publications	6,444			6,444	0.52
Professional Services	10,265	(5,276)	E,H,J	4,989	0.40
Depreciation	78,703	(59,829)	C,M	18,874	1.51
Mileage Reimbursement	(15,694)	/		(15,694)	-1.26
Advertising and Promotion	9,218	(9,218)	A,F	0	0.00
Bad Debts	12,007	(12,007)	A,H	0	0.00
Entertainment	3,800	(3,800)	A	0	0.00
Contributions	1,110	(1,110)	A,I	0	0.00
Federal Income Tax	66,258	(66,258)	A,E	0	0.00
Interest	7,535	(7,535)	A	0	0.00
Miscellaneous	14,876	(10,508)	Α	4,368	0.35
Cost of Money	6,462			6,462	0.52
Total Overhead Costs	\$2,332,633	\$(349,306)		\$1,983,327	158.98%

Sheet 1

Overhead Rate 190.58% 158.50%

References

- A. Unallowable amounts removed by XYZ Corp. per various FARs cites.
- B. Adjusted to year end trial balance actual cost amounts.
- C. Allocation by XYZ Corp. to computer cost center.
- D. Adjustment for WSDOT Bonus Policy. Maximum allowable amount is 15% of total allowable overhead.
- E. Federal income tax return preparation over \$250 unallowable per 48 CFR 31.205(b)(1), 48 CFR 31.201-6(d), and WSDOT policy.
- F. Advertising and public relations costs unallowable per 48 CFR 31.205-1(d).
- G. Costs of alcoholic beverages unallowable per 48 CFR 31.205-51.
- H. Bad debts unallowable per 48 CFR 31.205-3.
- I. Contributions unallowable per 48 CFR 31.205-8.
- J. Organization costs unallowable per 48 CFR 31.205-27(a)(1).
- K. Travel costs in excess of Federal Travel Regulations unallowable per 48 CFR 31.205-46(a)(2)(i).
- L. Adjust labor amount for uncompensated overtime.
- M. Adjustment to XYZ Corp. capitalization policy.
- N. Direct costs on other projects unallowable in overhead per 48 CFR 31.202(a).
- O. Key man life insurance unallowable per 48 CFR 31.205-19(a)(2)(vi).

Cost Categories Normally Included in a Firm's Overhead Schedule

Accounting — costs incurred for staff accountants or outside accounting vendors.

Administration — typically, salary costs of people not charging to any one final cost objective, such as a direct project.

Advertising and Promotion — mostly unallowable costs.

Annual Leave — vacation time paid to employees, officers, and owners.

Auto and Travel — costs for travel that are not project related. Payment of these costs must comply with the Federal Travel Regulation.

Bad Debts — losses on projects due to write offs of billed uncollected costs and/or unbilled costs. Not an allowable overhead cost.

Bonuses — incentive compensation; these costs are limited by WSDOT policy.

Business Taxes

Clerical Salaries — not charged direct to a project.

Computer Administration

Computer Expenses — net of costs recovered from direct billings.

Contributions — gifts to people or entities of money, services, assets, or any other item that may appear in the balance sheet or general ledger of a firm. Not allowable in overhead.

Depreciation

Direct Labor — dollar value of all labor worked for projects, regardless of whether billed or not.

Direct Labor Base — the total amount of direct labor recorded for all projects.

The amount which is used as the base for the calculation of an overhead rate.

Employee Insurance — medical, dental, life, disability, etc.

Employee Recruiting — help wanted advertising and interview expenses. Travel costs must comply with the Federal Travel Regulation.

Entertainment — any expense which appears to be social in nature. Not allowable in overhead.

Fees, Dues, Meetings — Costs of belonging to professional organizations and societies. Cost of attending official business meetings. These costs must comply with the Federal Travel Regulation where applicable.

Holiday — all paid holidays observed by the firm.

Income Taxes —federal income taxes are unallowable in overhead. State income taxes are allowable.

Insurance — general business and liability insurance. May be paid to a vendor or set up as a bona fide self insurance fund.

Interest Expense — Costs of borrowing, regardless of how paid. Unallowable in overhead.

Mileage Reimbursement — payments to employees for using their personal vehicles for company business, net of costs recovered from direct billings to projects. Rates paid cannot exceed the current rate allowed in the Federal Travel Regulation.

Miscellaneous — any expense not included in another account.

Overhead — indirect business expenses not directly chargeable to a project.

Principals Salaries — not charged direct to a project.

Printing, Stationary — paper products not for promotional purposes.

Professional Services — general legal, accounting, management consulting, and other services.

Rent — office and storage space costs, not charged direct to a project.

Repair and Maintenance — janitorial services and minor repairs to office space and equipment.

Retirement —costs paid by the firm for retirement programs, including 401(k) plan contributions and administrative expenses. Does not include contributions made by the employees.

Sick Leave — costs paid by the firm normally associated for leave taken for illness, injury, etc.

Social Security Taxes

Subscriptions and Publications

Telephone — costs incurred not chargeable to direct projects.

Unemployment Taxes

Warranty Services — costs incurred for previously completed projects, or fees for service contracts.

Workers Compensation

Types of Unallowable Costs Often Included in Overhead

The following is a listing (which is not all-inclusive) of costs which auditors typically find in a firm's overhead cost categories.

Updates to this guide may include additional examples of unallowable costs as they come to our attention.

Our recommendation to firms who may include these types of costs in their overhead computation is remove them to the extent possible before the firm is audited. A

Advertising 48 CFR 31.205-1(d)

Alcoholic beverages per 48 CFR 31.205-51

В

Bad debt expense per 48 CFR 31.205-5(c)

Bonuses in excess of 15 percent of total allowable overhead are unallowable per WSDOT policy.

Brochures per 48 CFR 31.205-1(f)(5)

C

Christmas party expenses in excess of \$25 per employee per 48 CFR 31.205-14 and WSDOT policy

Christmas cards for clients and the general public per 48 CFR 31.201-4

Credits for income from work study employees 48 CFR 31.201-5 per 48 CFR 31.205-1(f)(7), 48 CFR 31.205-43(a)

Contributions per 48 CFR 31.205-8

Civic club dues, except Chamber of Commerce, per 48 CFR 31.205-1(f)(7)

Christmas gifts per 48 CFR 31.205-14

Common control rental costs per 48 CFR 31.205-36(b)(3)

Costs not identified per 48 CFR 31.201-6(c)

D

Depreciation in excess of amount claimed on federal tax return per 48 CFR 31.205-11

Donations per 48 CFR 31.205-8

Directory advertising per 48 CFR 31.205-1(d) & (f)(1)

Direct costs billed to clients per 48 CFR 31.202(a)

Display costs per 48 CFR 31.205-1(f)(2)(i)

E

Entertainment per 48 CFR 31.205-14

Expenses with no support documents disallowed per 48 CFR 31.201-6(c)

F

Flowers to clients per 48 CFR 31.205-13(a)

Federal income tax per 48 CFR 31.205-41(b)(1)

Federal income tax preparation fees over \$250 per year per 48 CFR 31.205-41(b)(1), 31.201-6(d), and WSDOT policy

Finance charges per 48 CFR 31.205-20

G Н Interest per 48 CFR 31.205-20 J K Key man life insurance per 48 CFR 31.205-19(a)(2)(vi) L Local meals per 48 CFR 31.205-14 and WSDOT Travel Directive D 13-50, except when the meal is a bona fide business meeting. To support costs, there must be an agenda, a listing of people who attended showing how much was spent for each person. Local lodging per WSDOT Travel Directive D 13-50 Delinquent license fee per 48 CFR 31.201-3(a) М Costs of memberships in civic and community organizations, and not a membership in trade, business, technical and professional organizations per 48 CFR 31.205-1(f)(7&8) and 48 CFR 31.205-43 Ν 0 P Penalties per 48 CFR 31.205-15(a) Prior year expenses per 48 CFR 31.201-2(c) and 48 CFR 31.201-3(a) Premium time per 48 CFR 22.103-2 Q R Recovered in-house charges per 48 CFR 31.201-5 Recovered long distance phone calls per 48 CFR 31.201-5 Related party profit portion on rent per 48 CFR 31.205-36(b)(3) S Shareholder life insurance per 48 CFR 31.205-19(a)(2)(vi)

T

Trade show and advertising per 48 CFR 31.205-1(f)

Preparation fees for federal income tax returns in excess of \$250 per 48 CFR 31.205-41 and 31.201-6, and WSDOT policy

Travel costs exceeding maximum allowed per WSDOT Travel Directive D 13-50

U

Unsupported costs 48 CFR 31.201-6(c)

V

W

X

Υ

Z

Establishment of a Direct Labor Base When Developing Overhead Rates

During an audit, the WSDOT auditor will analyze how the firm charges labor and how it allocates costs based on the labor charges.

The objective of the analysis of the consultant's labor system is to ensure that labor costs are segregated between direct and indirect labor. This can include the identification of specific cost or profit centers, departments, contracts or cost objectives, or employees or groups of employees.

In reviewing a consultant's direct labor base, the auditor may select a period of time (usually the current fiscal year) to sample. The sample size selected is dependent on the size of firm. The auditor will then identify and list all individuals including the hours worked for direct projects and charged indirectly, including vacation, holiday, and sick leave hours.

These costs may be traced to a summary document. The document could be manually prepared or developed from a computer based system. This type of document may be identified as a labor distribution report (LDR). The auditor will compare the hours on the time sheet to the hours reported on the LDR. To make comparisons, the auditor will request a copy of the payroll registers which coincide with the time sheets and LDR amounts.

The auditor will then verify labor costs via a weekly or monthly payroll document to a general ledger transaction which identifies the dollar amount. These costs should match the dollar amount calculated by the auditor from the time sheets and/or LDR. By comparing dollar amounts in the General Ledger, the firm's direct labor, indirect labor, holiday, vacation, and sick leave costs are verified.

Based on a series of audit samples, the auditor will either accept the labor system or note deficiencies and adjust the direct labor base and/or indirect labor as necessary.

Overhead Rate Development — General Summary

All amounts listed on an overhead schedule should agree with a general ledger, trial balance, or financial statement. Preferably the consultants' accountant or certified public accountant should have compiled, reviewed, or audited the financial statements for the latest complete fiscal year and when possible, issued a report.

Direct Labor

Direct labor costs are normally the largest cost item listed on the overhead schedule. Direct labor should be listed separately on the overhead schedule because it is the basis for determining an allowable overhead rate. In order to verify these costs, support documents needed may include:

- general ledger
- labor distribution reports
- · payroll registers
- · time sheets
- W-2s
- personnel files for paid hourly rates and job classifications
- · check register
- canceled checks
- · journal entries
- job charge coding lists

All original support documents used to generate the direct labor amount may be requested.

Other Costs

All other costs on the overhead schedule can be grouped in various ways:

- · indirect
- · overhead
- · fringe benefits
- · salary related
- general and administrative

Support documents needed here include but are not limited to:

- · general ledger
- invoices
- · vouchers
- · agreement files

- recap of billed costs
- depreciation schedules
- · tax returns
- · rental agreements
- · insurance policies
- · bonus policy
- travel expenses
- · check register
- cash disbursement journals
- · canceled checks
- journal entries
- job charge coding lists

Indirect Labor

Indirect labor would include the same kind of support documents as direct labor:

- · general ledger
- labor distribution reports
- · payroll registers
- · time sheets

Office and Administrative Costs

Office costs and other in-house costs for reproduction, computer time, word processing, equipment rental, etc., can be stated so much per copy or so much per hour. Documents used to calculate the per copy or per hour charge would be necessary to determine the source of the per copy or per hour charge. Again, all support documents used to generate amounts on the overhead schedule would be needed. See Chapter 13 for more information.

All costs are subject to tests of allowability, allocability, and reasonableness based on federal, state and WSDOT laws, rules regulations, and policies.

WSDOT Overhead Policy

The WSDOT Overhead Policy was issued in 1994. It is included here for your use.

Cost Category	WSDOT Policy (Overhead Costs)			
Athletic Club Membership	Allowable, if costs are reasonable (maximum \$40 @ month @ employee using club) and memberships are available to all of the consultant's employees.			
Bank Fees	Allowable; unless the fee is for interest or penalties.			
Candy	Allowable per employee morale costs, if the costs are not excessive when compared to industry standards.			
Cookies	Allowable per employee morale costs, if the costs are not excessive when compared to industry standards.			
Coffee	Allowable per employee morale costs, if the costs are not excessive when compared to industry standards.			
Chamber of Commerce Dues	Allowable; these are business organizations.			
Christmas Cards	Allowable for employees and their families only. Unallowable for clients, etc.			
Christmas Parties	Allowable, if reasonable. Allow up to \$25 per attending employee, however, must exclude alcoholic beverage costs.			
Donuts	Allowable per employee morale costs, if the costs are not excessive when compared to industry standards.			
Federal Income Tax Preparation	Allowable up to \$250 per year.			
Flowers	Allowable per employee morale costs, if the costs are not excessive when compared to industry standards.			
Greeting Cards	Not allowable. This is an advertising cost.			
Lunches	(Incurred during nontravel status) Allowable at a bona fide business meeting and if the following documentation is provided:			
	1. Date and location of meeting.			
	2. Names of attendees.			
	3. Purpose of the meeting.			
	4. Cost of meeting, by item.			
	<i>Note:</i> The allowable amount per person cannot exceed the WSDOT Travel Directive D 13-50 amount for the meal period.			
Subsistence/Lodging Costs	Consultant is not subject to the maximum lodging, or subsistence amount as outlined in WSDOT Directive D 13-50 in overhead (this can include incidentals, tips, transportation to meals, etc.). They are subject only to the total per diem cost limitations.			
Summer Picnics	Allowable, if reasonable. Allow up to \$10 per attending employee. However, must exclude alcoholic beverage costs.			

Chapter 7 Direct Nonsalary Costs

Chapter 7

Direct Nonsalary Costs

Direct nonsalary costs (also called reimbursables) are those costs other than payroll and overhead costs which are incurred specifically for a given project. Depending upon the type of contract or agreement, these costs may or may not be billed to the client.

Types of Direct Nonsalary Costs

Types of direct nonsalary costs typically charged to a WSDOT agreement include but are not limited to:

- plan copies
- long distance phone calls
- travel
- subcontract costs
- · mileage costs
- subsistence
- equipment rental
- · photographs
- · contract employees
- · computer expense
- photocopies
- faxes
- courier service

Recording Direct Nonsalary Costs

A firm should record direct nonsalary costs separately from overhead costs in their accounting system. Even when a firm does not bill these costs directly to a project, they should be recorded as direct costs. If discovered by the auditor in direct costs, they will be removed, ref: 48 CFR 31.202(a).

Some firms elect to record direct nonsalary costs in their overhead accounts. When this is done, the firm must be able to prove that the overhead accounts are credited for all revenues billed to clients and for all unbilled direct nonsalary costs. Whether or not the firm actually collects on the billings is not relevant.

Audit of Nonsalary Costs

As with other costs, these costs must be properly supported in the records of the organization and traceable to source documentation.

Testing for allowability, reasonableness, and allocability is standard procedure for the auditor.

Developing Charge-Out Rates for Selected Direct Nonsalary Costs

For development of charge-out rates for computer costs, computer assisted drafting and design equipment, copy machines etc., see Chapter 13.

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Chapter 8 Fixed Fee

Chapter 8 Fixed Fee

Fee is the amount of profit allowed by an agreement. In a cost plus fixed fee agreement, it is a set dollar amount that is billed monthly by the estimated percentage of work completed. In an all-inclusive hourly rate agreement, fee is a component of the hourly billing rate.

The auditor will review fee paid (when not included in an all-inclusive hourly rate) to determine that the firm has received compensation based on the terms of the agreement and the progress billing to date.

The amount of fee is determined during negotiations between the consultant and the contracting office. WSDOT uses a formula to calculate fees for each job. The formula takes into account job complexity, difficulty, risk, consultant investment in equipment, number of subconsultants, and other factors (see the following pages).

By policy, WSDOT limits fee to a range of 17 to 35 percent of direct labor. By policy, FHWA limits fee to a range of 10 to 15 percent of direct labor plus overhead on federally funded projects.

For additional information on this subject, talk to the contracting officer or the consultant liaison person handling the proposed or ongoing agreement.

Fee Including Profit

- 1. Fee should be established as a dollar amount after considering:
 - a. Degree of risk.
 - b. Nature of the work to be performed.
 - c. Joint venture responsibilities.
 - d. Extent of the consultant's investment.
 - Number and amount for subconsultants.
 - f. Other criteria such as discussed in 48 CFR 31.105.

The final step is to determine a reasonable profit.

You may use a "weighted guideline method" of computing fee.

This is a technique that will ensure consideration of the relative values of the appropriate factors in the establishment of a fee during negotiations and provide documentation of how the fee was determined. 2. In negotiating fee as an element of price, a reasonable fee shall be negotiated or determined for each agreement by using the following procedure as a guide.

Weighted Guidelines

<u>Factor</u>	<u>Rate</u>	<u>Weight</u>	<u>Value</u>
Degree of Risk	25		
Relative Difficulty of Work	20		
Size of Job	15		
Period of Performance	15		
Contractor's Investment	5		
Assistance by the State	5		
Other Criteria	5		
Subconsultants	<u>10</u>		
	100		

3. Based on the circumstances of each agreement, each of the above factors shall be weighted from .17 to .35 as indicated below. The value shall be obtained by multiplying the rate by the weight. The value column, when totalled, indicates the fair and reasonable fee percentage of direct labor costs for the agreement.

Degree of Risk — Where the design involves no risk or the degree of risk is very small, the weighting should be .17; as the degree of risk increases, the weighting should be increased up to a maximum of .35. Agreements with options will have, generally, a higher weighted value than agreements without options for which quantities are provided. Other things to consider: the portions of the design to be done by subconsultants, nature of design, relationship of project estimated costs to realistic estimated costs, responsibility for design, reasonableness of negotiated costs, amount and type of labor included in costs, whether the negotiation is before or after performance of work, amount of principal time required.

Relative Difficulty of Design — If the design is most difficult and complex the weighting should be .35 and should be proportionately reduced to .17 for the simplest of jobs. This factor is tied in, to some extent, with the degree of risk. Some things to consider: the nature of the design; by whom it is to be done, i.e., subcontractors, consultants; what is the time schedule; rehabilitation work or new work.

Size of Job — All agreements with estimated total costs less than \$50,000 may be weighted at .35. Agreements estimated between \$50,000 and \$500,000 may be proportionately weighted from .35 to .21. Agreements from \$500,000 to \$1,000,000 may be proportionately weighted from .21 to .17 and work in excess of \$1,000,000 at .17. It should be noted that the magnitude of the job effects better control of fixed expenses.

Period of Performance — Agreements that extend in excess of 23 months are to be weighted at .35. Agreements of lesser duration are to be proportionately weighted to a minimum of .17 for work not to exceed 60 days. No weight where additional time is not required. This basically refers to changes that can be done within the original contract time. Exposure over long time jobs creates more chance of loss and less revenue to recover fixed expenses.

Contractor's Investment — To be weighted from .17 to .35 on the basis of below average, average, and above average. Things to consider: amount of subcontracting, government-furnished items, surveys, soil tests, methods of making progress payments, etc.

Assistance by the State — To be weighted from .35 to .17 on the basis of average to above average. Things to consider: existing design or plans, mapping, quantities, surveys, geotech information, etc.

Other Criteria — To be weighted from .35 to .17 on the basis of allowable cost to the consultant.

Subconsultants — To be weighted in proportion to the amount of subconsultants. Where 40 percent or more of the design is to be subbed out, the weighting is to be .35 and such weighting proportionately decreased to .17 where all the design is performed by the consultant's own forces.

When considered necessary because of unusual circumstances or local conditions, the range of weight may be increased above 35 if supported by adequate justification and approved by the Assistant Secretary, Environmental and Engineering Service Center.

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Consultant Fee Computation Agreement Y-Project: Consultant: Estimated Design Fee: Weighted Guidelines Factor Rate Weight Value Degree of Risk 25 Χ Relative Difficulty of Work Χ ____20___ Size of Job 15 Χ Period of Performance 15___ Χ ___5__ Contractor's Investment Χ ___5__ Χ ____ Assistance by the State 5____ Other Criteria Χ 10 Subcontracting Χ

Prepared By:	 	 	
Date:			

100

Total

Chapter 9 Subconsultants

Chapter 9

Subconsultants

Depending upon the size of an agreement and the variety of expertise required to accomplish a project, the consultant may elect to contract out part of the work to subconsultants. Also, federal and state requirements may require the use of disadvantaged minority women's business enterprises (DMWBE) in government contracted work.

The use of specific subconsultants and amounts to be billed by subs must be approved in the agreement in writing. Exhibits to the agreement will include the subconsultants proposed labor costs, overhead costs, direct nonsalary costs, and fee in the same manner as for the prime consultant.

All federal, state, and WSDOT rules, regulations, and policies are applicable to the subs.

The firms should discuss this area with the WSDOT contracting officer or consultant liaison in charge of the proposal.

Subconsultants should work with the prime in order to ensure that they understand the contractual relationship that exists between the two organizations. In addition, they should ensure for themselves that they understand the reporting requirements, record retention requirements, and the overall relationship between the work they perform and what is required by the prime as well as WSDOT Audit and management.

Note: Contract labor, i.e., contract employees hired for a specific project are considered to be a subcontractor to either the prime or designated subconsultant.

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Chapter 10 Record Retention for Consultants

Record Retention for Consultants

Chapter 10

Summary

The auditors rely upon a review of source documentation when conducting their audit of a firm's records.

Simply stated:

No source records = Questioned costs and recommendations that billed and paid costs be recovered from the consultant.

PLEASE NOTE !!!!!! PRIME AND SUBCONSULTANTS

It is important for the consultant to realize the following:

The requirement to retain all project and accounting records extends from the prime consultant to the subconsultant to any and all tiers. To further emphasize, prime consultants are responsible for ensuring that their subconsultants retain their original records as required by the agreement! If an audit has fundings on a subconsultant due to unavailable records, the prime consultant is responsible for paying the finding.

For subconsultants, it is important to remember that the three-year record retention period is three years from the date of final payment from WSDOT to the Prime Consultant. This can be much longer than three years from the date of final payment to the subconsultant.

Once an audit begins, the requirement to maintain records by the consultant continues until final resolution of the audit occurs. This extends the three-year requirement even further. Otherwise, the usual three-year period governs.

Consultants have the responsibility to maintain these records at their business location. Nowhere does it say that if the consultant has already sent copies of their records to WSDOT, they no longer are required to maintain all original records for the prescribed period of time.

The consultant has the responsibility to provide original documents as requested by the auditor.

Missing original supporting records or a lack of an audit trail is cause for audit findings.

Because of the importance of this area, we make direct reference to the audit criteria, 48 CFR Part 4 Administrative Matters Subpart 4.7 Contractor Records Retention.

4.700 Scope of Subpart

"This subpart provides policies and procedures for retention of records by contractors to meet the records review requirements of the Government. In this subpart, the terms "contracts" and "contractors" include "subcontracts" and "subcontractors...."

4.703 Policy

- (a) "... contractors shall make available records, which includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, and other supporting evidence to satisfy contract negotiation, administration, and audit requirements of the contracting agencies . . ."
- (c) "Nothing in this section shall be construed to preclude a contractor from duplicating or storing original records in electronic form unless they contain significant information not shown on the record copy. Original records need not be maintained or produced in an audit if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

 (1) The contractor or subcontractor has established procedures to ensure that the imaging process preserves accurate images of the original records, including signatures and other written or graphic images, and that the imaging process is reliable and secure so as to maintain the integrity of the records. (2) The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records. (3) The contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems."
- (d) If the information described in paragraph (a) of this section is maintained on a computer, contractors shall retain the computer data on a reliable medium for the time periods prescribed. Contractors may transfer computer data in machine readable form from one reliable computer medium to another. Contractors' computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Contractors shall also retain an audit trail describing data transfer. For the record retention time periods prescribed, contractors shall not destroy, discard, delete, or write over such computer data."

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Chapter 11 Task Assignment Agreements

Chapter 11

Task Assignment Agreements

Agreements with multiple tasks can be written in different ways. The following is a generalization of the extent of record keeping necessary to comply with the usual audit requirements and some of the pitfalls to avoid.

Labor Costs

Consultants and their subconsultants should maintain time sheets (cards/tickets) with coding to separately identify hours for each and every task order assignment or subtask order assignment. A master job charge coding chart should be maintained which identifies the task order by name and associated alpha/numeric designated code.

Pitfalls to avoid:

- 1. Changing a job code from one task number to another.
- 2. Using the same name or code for more than one task order.
- 3. Charges in excess of the established maximum amount payable for the individual task.
- 4. Charging for work performed before the authorized start date or after the authorized end date.

Direct Nonsalary Costs

For direct nonsalary costs (commonly termed reimbursables), the consultant and subconsultants need to identify on each vendor's invoice the appropriate task assignment number. For costs of in-house charges, sufficient coding must be included on the log sheets, mileage records, expense vouchers, or other source document. The auditor must be able to trace expenses to the source document. This coding should be done in a manner similar or identical to that used for the time sheets.

Pitfalls to avoid:

- 1. Splitting of outside vendor invoices between the various task assignment orders without a reasonable basis.
- 2. Failure to identify the task order that relates to the invoice or in-house cost.

Filing records associated with multiple task agreements.

The auditor must have access to the following types of information:

- 1. Task order documents.
- 2. Billings by task.
- 3. Original source documentation by task.

When setting up a filing system, the consultant should take care to ensure that the system allows easy access to information or data. Mixing the task information together often results in a difficult audit trail.

Sometimes, items such as time sheets, invoices, or other original documents are lost or misplaced and this leads to questioned costs unless they can be found. This adds to audit time and the consultant's frustration with the total audit process.

It should also be noted that all costs incurred on specific task assignments are considered direct costs. Such costs may not be transferred to overhead or to other tasks or projects simply because they were not paid during the normal process of progress billings.

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Chapter 12 Invoicing WSDOT

When invoicing WSDOT, the consultant should clearly identify the billing period, names and job classifications of all individuals being billed, the payroll or billing rate by individual, the actual hours each individual worked, the overhead applied if applicable, the direct nonsalary costs, subconsultant costs if any, and profit applied. These costs must be clearly identified by task and preferably sorted by task within the monthly billing.

Example: (The actual format requested by WSDOT management may vary.)

Note: Names, job classes, task numbers, and hours are assumed for this example only.

		Job					
<u>Period</u>	Employee	<u>Class</u>	<u>Task</u>	<u>Hours</u>	Rat	<u>e</u>	<u>Dollars</u>
1/1-	G. Jones	Eng. V	121.1	14.5	\$32.	25	\$467.63
2/28/97							
Total Lab	or Task 121.1				\$	467	7.63
Overhead	1 @ 143.48%				\$	670).96
Direct No	onsalary Costs:						
Cop	oies 233 at 3.5	cents	\$	8.16			
Mile	eage 400 miles	at 31 cents		124.00			
Hot	el/Per diem 1/5	5-1/9		475.00			
Total Dire	ect Nonsalary	Costs	\$	607.16	\$	607	7.16
Subconsu	ıltants (See Att	ached Backu	p for In	voice)			
Geotech 1	Inc.		\$	5,789.09			
Engineeri	ing Group Ltd.			999.43			
Conglom	erate Drillers			7,776.52			
Total Sub	consultant Cos	sts			\$1	4,565	5.04
Profit @	32.2% of Direc	ct Labor			\$	150).58
Total Tasi	k 121.1 This B	illing			\$1	6,46	1.37
Billings p	orior to This In	voice	\$ 34	16,987.05			
This Billi	ing		1	16,461.37			
Total Bill	ed to Date		\$36	63,448.42			
Task 121.	.1 Maximum		\$45	55,456.78			
Amount 1	Left on Task 12	21.1	\$ 9	92,008.36			

		Job				
<u>Period</u>	Employee	<u>Class</u>	<u>Task</u>	<u>Hours</u>	Rate	<u>Dollars</u>
1/14-	G. Jones	Eng. V	43.2	44.0	\$32.2	25 \$1,419.00
2/17/97						
Total Lab	or Task 43.2				\$ 1	,419.00
Overhead	@ 143.48%				\$ 2	2,035.98
Direct No	onsalary Costs:					
Cop	ies 23 at 3.5 ce	ents	\$	0.81		
Mile	eage 288 miles	at 31 cents		89.78		
Hote	el/Per Diem 1/	22-1/28		665.00		
Total Direct Nonsalary Costs		\$	755.09	\$	755.09	
Subconsu	ltants — None	this billing				
Profit @ 32.2% of Direct Labor				\$	456.92	
Total Tasl	k 43.2 This Bil	ling			\$ 4	,666.99
Billings F	Prior to This In	voice	\$30	9,654.32		
This Billi	ng			4,666.99		
Total Bill	ed to Date		\$31	4,321.31		
Task 43.2	Maximum		\$40	0,888.50		
Amount I	Left on Task 43	3.2	\$ 8	6,567.19		

Note: As with other examples shown in this guide, the use of the same or similar type format will not ensure the allowability of costs billed to the department.

For any item billed to WSDOT, the costs must be supported by source documentation, be reasonable, allowable, and allocable to the project.

Select costs may require advance approval from the contracting officer.

This example of a billing format is what WSDOT Audit would like to see. Individual contracting officers may have a format which varies from those shown above. Check with the contracting office for the format and details expected on a firm's billing.

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Chapter 13 Development of Charge-Out Rates

Development of Charge-Out Rates

Chapter 13

This chapter addresses the development of charge-out rates for computer use, CADD, equipment, copies, etc.

Basic Requirements

In order for in-house equipment usage or other costs to be billable directly to a WSDOT project, several conditions must be met. (This excludes mileage for automobiles and light trucks which must be billed out at the WSDOT Travel Directive D 13-50 rate per mile, or the actual rate, whichever is less.)

- 1. Maintenance and summarization of accounting records sufficient to prove the actual rate(s) for the in-house cost(s) to be charged.
- 2. Fully depreciated equipment requires a special advance agreement to allow any charge on the agreement.
- 3. Consistent application of charging the same in-house cost rates directly to all jobs by the consultant.

This means a record of total usage both direct and indirect (total hours, items, miles, and so forth) must be kept and total associated costs must be kept. Total costs divided by total usage would equal the appropriate rate. Only the total indirect usage is acceptable for inclusion in the consultant's overhead rate.

Example:

For copies to be charged directly to an agreement, the consultant must maintain a record of the total copies used per year and divide this into total copier expenses. This may include copier lease or depreciation, repair and maintenance, supplies and labor. If any of the expenses are already in the consultant's overhead schedule, then the overhead schedule would have to be credited for the direct project cost amounts.

Market Rates Are Not Acceptable

It is neither accurate nor acceptable to use a market rate as a charge rate. Nor to then credit overhead for the amount charged out on all agreements for two reasons:

- 1. Market rates are not actual cost because they include a profit.
- 2. The consultant's jobs may not identify all usage.

Costs Not Allowed by Agreement (Contracts) or Clients

Consultants may encounter situations where a client does not allow the firm to bill all direct nonsalary costs incurred by the firm while working on a project. The situation may also exist where agreement dollar limits are being reached by the consultant, requiring them to make the choice of billing labor costs versus direct nonsalary costs.

In cases like those described above, those costs associated with the nonbilled direct nonsalary costs cannot be put into the firm's overhead. This would result in an inflated overhead rate being applied to WSDOT agreements. Any such costs identified by the auditor will be eliminated from the overhead account values, and the rate adjusted accordingly.

If you need more information on this subject, please contact the Audit Office.

FARs Discussion on Equipment Use Rates and Costs

In regard to rates charged for fully depreciated equipment, FAR 48 CFR 31.109 Advance Agreements, Paragraph (h) states that "Examples of costs for which advance agreements may be particularly important are — (2) Use charges for fully depreciated assets;"

In regard to rates charged for construction equipment, FAR 48 CFR 31.105, Construction and architect-engineer contracts, Paragraph (d) states that "Except as otherwise provided in this paragraph, the allowability of costs for construction and architect-engineer contracts shall be determined in accordance with Subpart 31.2."

Subparagraph (2) goes on to say "Construction equipment as used in this section, means equipment (including marine equipment) in sound workable condition, either owned by or controlled by the contractor or the subcontractor at any tier, or obtained from a commercial rental source, and furnished for use under Government contracts."

- (i) "Allowable ownership and operating costs shall be determined as follows:"
 - (A) "Actual cost data shall be used when such data can be determined for both ownership and operations costs for each piece of equipment, or groups of similar serial or series equipment, from the contractor's accounting records. When such costs cannot be so determined, the contracting agency may specify the use of a particular schedule of predetermined rates or any part thereof to determine ownership and operating costs of construction equipment (see subdivisions (d)(2)(i)(B) and (C) of this section). However, costs otherwise unallowable under this part shall not become allowable through the use of any schedule (see 31.109(c)). For example, schedules need to be adjusted for Government contract costing purposes if they are based on replacement costs, include unallowable interest costs, or use improper cost of money rates or computations. Contracting officers should review the computations and factors included within the specified schedule and ensure that unallowable or unacceptable computed factors are not allowed in cost submissions."

- (B) "Predetermined schedules of construction equipment use rates (e.g., the Construction Equipment Ownership and Operating Expense Schedule, published by the U.S. Army Corps of Engineers, industry sponsored construction equipment cost guides, or commercially published schedules of construction equipment use cost), provide average ownership and operating rates for construction equipment. The allowance for operating costs may include costs for such items as fuel, filters, oil, and grease; servicing, repairs, and maintenance; and tire wear and repair. Costs of labor, mobilization, demobilization, overhead, and profit are generally not reflected in schedules, and separate consideration may be necessary."
- (C) "When a schedule of predetermined use rates for construction equipment is used to determine direct costs, all costs of equipment that are included in the cost allowances provided by the schedule shall be identified and eliminated from the contractor's other direct and indirect costs charged to the contract. If the contractor's accounting system provides for site or home office overhead allocations, all costs which are included in the equipment allowances may need to be included in any cost input base before computing the contractor's overhead rate. In periods of suspension of work pursuant to a contract clause, the allowance for equipment ownership shall not exceed an amount for standby cost as determined by the schedule or contract provision."
- (ii) "Reasonable costs of renting construction equipment are allowable. . ."

In regard to the prohibition from including direct costs in overhead, FAR 48 CFR 31.202 Direct Costs, states that

- (a) "A direct cost is any cost that can be identified specifically with a particular final cost objective. No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective. Costs identified specifically with the contract are direct costs of the contract and are to be charged directly to the contract. All costs specifically identified with other final cost objectives of the contractor are direct costs of those cost objectives and are not to be charged to the contract directly or indirectly."
- (b) "For reasons of practicality, any direct cost of minor dollar amount may be treated as an indirect cost if the accounting treatment
 - (1) Is consistently applied to all final cost objectives; and
 - (2) Produces substantially the same results as treating the cost as a direct cost."

Summary

If you want to charge out computer time, photocopies, CADD, equipment, etc., have:

- The rate methodology documented.
- Costs used in the methodology supported in your records.
- Be consistent in charging directly to projects.
- Include only the net amount (after revenues) as indirect costs in overhead.

The costs billed in all cases will be reviewed by the auditor for reasonableness, allowability, and allocability to the WSDOT project.

Regardless of how billing rates are determined, all costs applicable to the equipment being billed must be removed from overhead accounts. This includes maintenance, depreciation, storage, insurance, and transportation costs.

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Chapter 14 Related Party Transactions

Chapter 14

Related Party Transactions

Common control in related party transactions exists when business transactions are conducted at less than arm's length between businesses and/or persons that have a family or business relationship. Examples are transactions between family members, transactions between subsidiaries of the same parent company, or transactions between companies owned in whole or in part by the same person or persons.

Reference: 48 CFR 31.205-36 Rental Costs

Paragraph (b) "The following costs are allowable;"

Subparagraph (3) "Charges in the nature of rent for property between any divisions, subsidiaries, or organization under common control, to the extent that they do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, facilities capital cost of money, and maintenance (excluding interest or other unallowable costs pursuant to Part 31), provided that no part of such allowed costs shall duplicate any other allowed cost."

This criteria (cost principle) is used as a basis for rental costs. The principle identifies what is not allowed. Specifically, profit on rental transactions of property and/or equipment between organizations under common control. We find problems with unallowable rental profit being included in overhead rates more often in small businesses than in large ones.

Common Problems

The most common problem found by the auditor is when the consulting firm being audited pays rent for office, laboratory, or warehouse space and/or equipment to another firm owned in whole or in part by the owner, or directly to the owners, or family members of the owner of the consulting firm. WSDOT Audit considers common control to exist when ownership of either firm is put in the name of another family member, such as the spouse or children.

When Common Control is Found

Once common control is found, the auditor will need copies of financial statements and/or tax returns of the rental company. If the rental company has reported a profit, that portion of profit attributed to payments by the consulting firm in common control is unallowable for overhead. Costs that are unallowable in the consultant's overhead rate per FARs are also unallowable in calculating costs of the building.

In the case of space rent, the portion of unallowable profit in overhead is usually determined on a square footage basis. For instance, if 100 percent of available space is rented to the consulting firm being audited, than 100 percent of the profit is unallowable. If only 10 percent of the available space is used by the consulting firm, than 10 percent of the profit is unallowable.

If common control ownership is not 100 percent, than the actual percentage of ownership will be used to calculate the amount of unallowable common control point.

For equipment rentals, the amount of unallowable profit in overhead is determined on a case-by-case basis using a reasonable allocation of costs and revenues between the equipment rented under common control and equipment rented to other firms.

Once the amount of unallowable profit in rental payments has been determined, that amount will be shown as a reduction adjustment on the overhead schedule or to a direct billing charge for services.

Summary

The common control issue is a complex problem. In many cases, input from legal counsel may be required in order to determine the final outcome of audit questions.

Should the auditor become aware of a situation that appears to be a common control issue, numerous questions will be asked. In addition, requests for documentation and information will be made of the firm which may not be considered relevant by the auditee based on their experience with a purely financial type audit.

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Chapter 15 Single Audit Act

Single Audit Act

Chapter 15

In November 1995, Congress passed the National Highway System Designation Act (NHS). Section 307 of the Act, "Quality Through Competition," revised Section 112(b)(2) of Title 23, United Stated Code, which deals with contracting for engineering and design services.

This new section requires that agreements or subagreements for engineering and design services funded in whole or in part with federal aid highway funds be audited in accordance with the Federal Acquisition Regulations (Code of Federal Regulations, Title 48, Part 31). It also established the requirement that, instead of doing its own audits, a recipient of funds by an agreement or subagreement awarded in accordance with Section 112.A would accept indirect cost rates established by a cognizant federal or state government agency.

The new section states that "once a firm's indirect cost rates are accepted . . ., the recipient of the funds shall apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and shall not be limited by administrative or de facto ceilings of any kind."

The major impact on WSDOT was that the agency eliminated the 165 percent cap on overhead rates that had been used for years. In cooperation with AASHTO and its member state departments of transportation, WSDOT had already been accepting and using indirect cost rate audits done by other federal and state agencies for several years. We continue to accept audited rates by federal and state agencies and by CPA firms when their workpapers have been reviewed by and their work accepted by a federal or state agency. We also provide indirect cost rate data on firms that we have audited to other federal and state agencies when asked to do so.

Washington State

The Washington State Auditor's Office (SAO) is responsible for auditing state agencies, counties, cities, towns, school districts, ports, and other government agencies within the state. Under the Single Audit Act, they have to audit major federal programs directly. Therefore, virtually all expenditures of federal funds by government agencies in Washington are audited by SAO in their normal course of work. However, they do not specifically test a federal aid program unless it comes up in their sampling. It is assumed that if the agency's accounting systems and internal control structure are adequate, then control over expenditures of federal funds is also adequate and in compliance with the agreement or grant.

Actual Implication

What this actually means is that Federal Highway Administration and Federal Transit Authority agreements and grants with government agencies in Washington State are not directly audited. For this reason, it is WSDOT policy to audit agreements and grants with private businesses with minimum expenditures of \$100,000 or more. Upon request by the contracting officer or other authority, we will also audit work conducted for local agencies by consultants when costs are less than \$100,000.

We audit these agreements with government agencies even though they are included in the single audit conducted by SAO. In this way, we are able to satisfy ourselves that the problems cited by the Health and Human Services Inspector General in his report on the Single Audit Act do not mask problems with transportation agreements and grants. These problems include (1) sample sizes that are too small to be representative of the population tested, (2) lack of testing to specific agreement and grant requirements, and (3) lack of auditing and monitoring of subrecipients.

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Chapter 16 Auditor's Review of Internal Control

Chapter 16

Auditor's Review of Internal Control

When the WSDOT Audit Office conducts an audit (i.e., preaward, interim, special, or post), an internal control review and accounting system review are performed.

Government auditing standards require that: "A sufficient understanding of the internal control structure is to be obtained to plan the audit and to determine the nature, timing, and extent of tests to be performed."

The internal control structure consists of the control environment, accounting systems, and specific internal control procedures. Internal control is the responsibility of the consultant's management. The policies and procedures that consultant management establish for the firm determine the internal control structure. Once the auditor obtains an understanding of the internal control structure of the consultant, a written report is made part of the audit report.

Unless we are relying on work done by another auditor, the auditor conducts an internal control review using an internal control questionnaire. This questionnaire discusses the following general areas of the consultants' accounting system: general controls; cash receipts; cash disbursements; bank reconciliations; accounts receivable; accounts payable; inventories; property, plant and equipment; purchasing and receiving; and, payroll. Questions are asked in a yes, no, or not applicable format. Normally, it does not take long to answer the questions as they pertain to the consultant's accounting system.

Audit tests during the audit process are used to verify that the conditions as reported exist within the organization.

During each succeeding audit we perform of the consultant, the internal control questionnaire is updated. This lets us know if any changes have been made to the internal control structure since the last time we audited the consultant. There are instances where we have audited a consultants' complete fiscal year and the consultant has been awarded additional agreements from WSDOT. In this instance, we can rely on the previous internal control review.

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Chapter 17 WSDOT Standard Agreements

Chapter 17

WSDOT Standard Agreements

Some organizations have legal services within their operation. Others acquire such services on an as need basis, usually after getting into contractual problems.

We have included copies of standard WSDOT consultant agreements.

We highly recommend that when entering into an agreement with WSDOT, that someone of authority and those close to the agreement read the complete agreement!

It may save you trouble in the end.

In order for you to become familiar with the types of agreements used by WSDOT, we have provided the following:

- · Cost Plus a Fixed Fee
- · Negotiated Hourly Rates
- Task Order Negotiated Hourly Rates
- Provisional Hourly Rates
- Task Order Provisional Hourly Rates
- Lump Sum

Negotiated hourly rate and provisional hourly rate agreements may also be called all-inclusive hourly rate agreements.

If prior to signing the agreement or if during the course of performing the work the firm has any questions regarding the eligibility of costs or procedures for doing something, contact the WSDOT consultant coordinator for an explanation!

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1999 Professional Services Consultant Agreement — Cost Plus a Fixed Fee

1999 PROFESSIONAL SERVICES CONSULTANT AGREEMENT COST PLUS A FIXED FEE		Organization and Address	
Agreement Number		Federal I.D. or S.S. Number	1099 Form Required YES NO
Completion Date	Federal Aid Number (If Applicable)	Unified Business Identifer (UBI) Number	Fixed Fee
Overhead Progress Payme Overhead Method	tate	Project Title and Description of Wor	rk:
DBE Participation YES NO% MBE Participation (Voluntary) YES NO% WBE Participation (Voluntary) YES NO%		Total Amount Authroized Management Reserve Fund Maximum Amount Payable	
the Washington State Departmereinafter called the "CONSIWITNESSETH THAT: WHEREAS, the STATE desir WHEREAS, the STATE does assistance of a CONSULTAN WHEREAS, the CONSULTA Applicable, and has signified a	nent of Transportation and the Secretary of ULTANT". Trees to accomplish the above referenced P not have sufficient staff to meet the required to provide the necessary services for the NT represents that he/she is in compliant a willingness to furnish Consulting service deration of the terms, conditions, covena	PROJECT, and fired commitment and therefore deems it the PROJECT; and fince with the Washington State Statutes reces to the STATE,	"STATE", and the above organization t advisable and desirable to engage the relating to professional registration, if
	General De IENT shall consist of the above described CONSULTANT shall furnish all service		

II Scope of Work

The Scope of Work and projected level of effort required for this project is detailed in Exhibit "B" attached hereto, and by this reference made a part of this AGREEMENT

III

General Requirements

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the STATE. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the STATE. The CONSULT-ANT shall attend coordination, progress and presentation meetings with the STATE or such Federal, Community, city or County officials, groups or individuals as may be requested by the STATE. The STATE will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the STATE and the CONSULT-ANT and shown in Exhibit "B" attached hereto and made part of this Agreement. The CONSULTANT shall prepare a monthly progress report, in a form approved by the STATE, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women Business Enterprises (WBE) if required, shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "E". All reports, PS&E materials and other data, furnished to the CONSULTANT by the STATE shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT and are property of the STATE. Reuse by the STATE or by others acting through or on behalf of the STATE of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

IV

Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the STATE. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the STATE, in the event of a delay attributable to the STATE, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the STATE is required to extend the established completion time.

V

Payment

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work". The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

A. Actual Costs: Payment for all consulting services for this project shall be on the basis of the CONSULTANT's actual cost plus a fixed fee. The actual cost shall include direct salary cost, overhead, direct nonsalary costs and fixed fee.

2

- Direct Salary Costs: The direct salary cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT. The CONSULTANT shall maintain support data to verify the direct salary costs billed to the STATE.
- 2. Overhead Costs: Overhead costs are those costs other than direct costs which are included as such on the books of the CONSULT-ANT in the normal everyday keeping of its books. Progress payments shall be made at the rate shown in the heading of this AGREEMENT under "Overhead Progress Payment Rate". Total overhead payment shall be based on the method shown in the heading of the AGREEMENT. The two options are explained as follows:
 - a. Fixed Rate: If this method is indicated in the heading of the AGREEMENT the STATE agrees to reimburse the CON-SULTANT for overhead at the percentage rate shown. This rate shall not change during the life of the AGREEMENT.
 - b. Actual Cost: If this method is indicated in the heading of the AGREEMENT the STATE agrees to reimburse the CON-SULTANT the actual overhead costs verified by audit, up to the maximum total amount payable, authorized under this AGREEMENT, when accumulated with all other actual costs.

A summary of the CONSULTANT's cost estimate and the overhead computation are attached hereto as Exhibit "C" and by this reference made part of this AGREEMENT. When an Actual Cost method is used, the CONSULTANT (prime and all subconsultants) will submit to the STATE within six (6) months after the end of each firm's fiscal year, an overhead schedule in the format required by the STATE (cost category, dollar expenditures, etc.) for the purpose of adjusting the overhead rate for billing purposes. It shall be used for the computation of progress payments during the following year and for retroactively adjusting the previous year's overhead cost to reflect the actual rate. This information will be sent to the Consultant Service's Office.

FAILURE TO SUPPLY THIS INFORMATION BY EITHER THE PRIME CONSULTANT OR ANY OF THE SUBCONSULTANTS SHALL CAUSE THE STATE TO WITHHOLD PAYMENT OF THE BILLED OVERHEAD COSTS UNTIL SUCH TIME AS THE REQUIRED INFORMATION IS RECEIVED AND AN OVERHEAD RATE FOR BILLING PURPOSES IS APPROVED.

The STATE and/or the Federal Government may perform an audit of the CONSULTANT's books and records at any time during regular business hours to determine the actual overhead rate, if they so desire.

3. Direct Non-Salary Costs: Direct non-salary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the STATE. The CONSULTANT shall comply with the rules and regulations regarding travel costs in accordance with the STATE Department of Transportation Directive D13-50 and revisions thereto. The billing for direct non-salary costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the

original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the services provided under this AGREEMENT.

- Fixed Fee: The fixed fee, which represents the CONSULTANT's profit, is shown in the heading of this AGREEMENT under Fixed Fee. This amount does not include any additional fixed fee which could be authorized from the Management Reserve Fund. This fee is based on the scope of work defined in this agreement and the estimated man-months required to perform the stated scope of work. In the event a supplemental agreement is entered into for additional work by the CONSULTANT, the supplemental agreement may include provisions for the added costs and an appropriate additional fee. The fixed fee will be pro-rated and paid monthly in proportion to the percentage of work completed by the CONSULTANT and reported in the monthly progress reports accompanying the invoices. Any portion of the fixed fee earned but not previously paid in the progress payments will be covered in the final payment, subject to the provisions of Section IX entitled "Termination of Agreement."
- 5. Management Reserve Fund: The STATE may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV. "Extra Work".
- 6. MaximumTotal Amount Payable: The MaximumTotal Amount Payable, by the STATE to the CONSULTANT under this AGREEMENT, shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, which includes the Fixed Fee and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for extra work as stipulated in Section XIV, "Extra Work."
- B. Monthly Progress Payments: The CONSULTANT may submit invoices to the STATE for reimbursement of actual costs plus the calculated overhead and fee not more often than once per month during the progress of the work. Such invoices shall be in a format approved by the STATE and accompanied by the monthly progress reports required under GENERAL REQUIREMENTS, of this AGREEMENT. The invoices will be supported by itemized listing for each item including direct salary, direct non-salary and allowable overhead costs to which will be added the pro-rated Fixed Fee. To provide a means of verifying the invoiced salary costs for CONSULTANT employees, the STATE may conduct employee interviews. These interviews may consist of recording the names, titles salary rates and present duties of those employees performing work on the PROJECT at the time of the interview.
- C. Final Payment: Final payment of any balance due the CONSULT-ANT of the gross amount earned will be made promptly upon its verification by the STATE after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all

claims for payment which the CONSULTANT may have against the STATE unless such claims are specifically reserved in writing and transmitted to the STATE by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and that at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the STATE within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the STATE of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the STATE for audit findings.

D. Inspection of Cost Records: The CONSULTANT and his/her sub-consultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three years after final payment, the cost records and accounts pertaining to this AGREE-MENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

Subcontracting

The STATE permits subcontracts for those items of work as shown in Exhibit "D" to this AGREEMENT.

Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit "D", attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultants shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for subcontracting shall create, between the STATE and subcontractor, any contract or any other relationship.

VII Employment

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

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Audit Guide for Consultants August 1999 Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation or the STATE, except regularly retired employees, without written consent of the public employer of such person.

VIII

Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services. The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. Compliance With Regulations: The CONSULTANT shall comply with all Regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710.405(b) and Title VI of the Civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- B. Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. Solicitations for Subconsultants, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.
- D. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives

issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - 1. Withholding of payments to the CONSULTANT under the contact until the CONSULTANT complies, and/or
 - Cancellation, termination or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- G. Unfair Employment Practices: The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O.77-13 of the Governor of the State of Washington which prohibit unfair employment practices.

IX Termination of Agreement

The right is reserved by the STATE to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT which, when added to any payments previously made, shall total the actual costs plus the same percentage of the Fixed Fee as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

No payment shall be made for any work completed after ten days following receipt by the CONSULTANT of the Notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the STATE for any excess paid.

If the services of the CONSULTANT are terminated by the STATE for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULT-ANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination; the cost to the STATE of employing another firm to complete the work required and the time which maybe required to do so, and other factors which affect the value to the STATE of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the STATE in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the STATE. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the STATE, if the STATE so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the STATE's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the STATE shall not constitute a waiver by the STATE of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the STATE. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X Changes of Work

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

XI Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging the Secretary's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in the Washington State Department of Transportation Consultant Service's Procedures Manual M27-50 and revisions thereto.

XII

Venue, Applicable Law and Personal Jurisdiction

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in Thurston County.

XIII Legal Relations

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREE-MENT. This contract shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the STATE, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the STATE shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the STATE and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law. Title 51 BCW

Unless otherwise specified in the AGREEMENT, the STATE shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the STATE during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

Insurance Coverage

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- Worker's compensation and employer's liability insurance as required by the STATE.
- Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for

bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).

C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit. (Applicable only if CONSULTANT if using WSDOT vehicle.)

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washington, Department of Transportation will be named on all policies as an additional insured. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by this AGREE-MENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Consultant Administrator Washington State Department of Transportation Transportation Building P.O. Box 47323 Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

The CONSULTANT's professional liability to the STATE shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The STATE will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

XIV Extra Work

- A. The STATE may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit its "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30 days) from the date of receipt of the written order. However, if the STATE decides that the facts justify it, the STATE may receive and act upon a claim submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall

not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XV

Endorsement of Plans

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

XVI Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the work in progress.

xvII

Certification of the Consultant and the State

Attached hereto as Exhibit "A-1", are the Certifications of the CONSULTANT and the STATE, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters - primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in AGREEMENTS over \$100,000.

XVIII

Complete Agreement

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

XIX Execution and Acceptance

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

Sy_____

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

Assistant Secretary for the Environmental and Engineering Service Center

Any modification, change or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

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By

1999 Professional Services Consultant Agreement — Negotiated Hourly Rates

1999 PROFESSIONAL SERVICES CONSULTANT AGREEMENT NEGOTIATED HOURLY RATES		Organization and Address	
Agreement Number		Federal I.D. or S.S. Number	1099 Form Required? YES NO
Completion Date	Federal Aid Number (If Applicable)	Project Title and Description of Work:	
Unified Business Identifier (UBI) Number		
MBE Participation (Volunt YES WBE Participation (Volunt WBE Participation (Volunt YES	NO%	Total Amount Authorized Management Reserve Fund Maximum Amount Payable	
the Washington State Department hereinafter called the "CONSUL	nt of Transportation and the Secretary of	, 1999, between the f Transportation, hereinafter called the t	
WHEREAS, the STATE desires	s to accomplish the above referenced P	PROJECT and	
WHEREAS, the STATE does no	-	ired commitment and therefore deems it	advisable and desirable to engage the
	IT represents that he/she is in compliar willingness to furnish Consulting service	nce with the Washington State Statutes reces to the STATE.	elating to professional registration, if
	2	ants and performance contained herein, o	r attached and incorporated and made
NOW THEREFORE, in consider a part hereof, the parties hereto	agree as removed		
a part hereof, the parties hereto The work under this AGREEME work for this PROJECT. The C	General De ENT shall consist of the above described ONSULTANT shall furnish all service	I escription of Work work and services as herein defined and n es, labor and related equipment necessary	
a part hereof, the parties hereto The work under this AGREEME work for this PROJECT. The C designated elsewhere in this AC	General De ENT shall consist of the above described CONSULTANT shall furnish all service GREEMENT. Sco	escription of Work work and services as herein defined and n	to conduct and complete the work as

III General Requirements

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the STATE. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the STATE. The CONSULT-ANT shall attend coordination, progress and presentation meetings with the STATE or such Federal, Community, city or County officials, groups or individuals as may be requested by the STATE. The STATE will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the STATE and the CONSULT-ANT and shown in Exhibit "B". The CONSULTANT shall prepare a monthly progress report, in a form approved by the STATE, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women Business Enterprises (WBE) if required, shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "E." All Reports, PS&E materials and other data, furnished to the CONSULT-ANT by the STATE shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULT-ANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are property of the STATE. Reuse by the STATE or by others acting through or on behalf of the STATE of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULT-ANT.

IV

Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the STATE. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the STATE, in the event of a delay attributable to the STATE, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the STATE is required to extend the established completion time.

V Payment

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

 Hourly Rates: The CONSULTANT shall be paid by the STATE for work done, based upon the negotiated hourly rates shown in Exhibit C attached hereto and by this reference made part of this AGREE-MENT. The rates listed shall be applicable for the first twelve (12) month period and shall be subject to negotiation for the following twelve (12) month period upon request of the CONSULTANT or the STATE. If negotiations are not conducted for the second, or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this AGREE-MENT, or subsequent written authorization(s) from the STATE shall be utilized for the life of the AGREEMENT. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.

- 2. Direct Non-Salary Costs: Direct nonsalary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the STATE. The CONSULTANT shall comply with the rules and regulations regarding travel costs in accordance with the STATE Department of Transportation Directive D13-50 and revisions thereto. The billing for direct nonsalary costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the services provided under this AGREEMENT.
- . Management Reserve Fund: The STATE may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this Agreement. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work".
- Maximum Amount Payable: The maximum amount payable for completion of work under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The maximum amount payable includes the Management Reserve Fund, but does not include payment for extra work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREE-MENT
- 5. Monthly Progress Payments: Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly invoices shall be supported by detailed statements for hours expended at the rates established in Exhibit "C", including names and classifications of all employees, and invoices for all direct nonsalary expenses. To provide a means of verifying the invoiced salary costs for the CONSULTANT's employees, the STATE may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates and present duties of those employees performing work on the PROJECT at the time of the interview.
- i. Inspection of Cost Records: The CONSULTANT and his/her sub-consultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three years after final payment, the cost records and accounts pertaining to this AGREE-MENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit is started before the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The three year retention period begins when the CONSULTANT receives final payment.
- Final Payment: Final payment of any balance due the CONSULT-ANT of the gross amount earned will be made promptly upon its

verification by the STATE after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the STATE unless such claims are specifically reserved in writing and transmitted to the STATE by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULT-ANT, the CONSULTANT will refund such overpayment to the STATE within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT or any claims relating to the validity of a finding by the STATE of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the STATE for audit findings.

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The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for subcontracting shall create, between the STATE and subcontractor, any contract or any other relationship.

VII Employment

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission

on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation or the STATE, except regularly retired employees, without written consent of the public employer of such person.

VIII

Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services.

The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. Compliance with Regulations: The CONSULTANT shall comply with all regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710.405(b) and Title VI of the Civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- B. Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. Solicitations for Subconsultants, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.
- D. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives.

Audit Guide for Consultants August 1999 Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or
 - 2. Cancellation, termination or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- G. Unfair Employment Practices: The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O.77-13 of the Governor of the State of Washington which prohibit unfair employment practices.

IX Termination of Agreement

The right is reserved by the STATE to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at time of termination of this AGREEMENT, plus any direct nonsalary costs incurred at the time of termination of this AGREEMENT.

No payment shall be made for any work completed after ten days following receipt by the CONSULTANT of the Notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the STATE for any excess paid.

If the services of the CONSULTANT are terminated by the STATE for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULT-ANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination; the cost to the STATE of employing another firm to complete the work required and the time which maybe required to do so,

and other factors which affect the value to the STATE of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the STATE in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the STATE. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the STATE, if the STATE so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the STATE's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the STATE shall not constitute a waiver by the STATE of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the STATE. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X Changes of Work

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

XI Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging the Secretary's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in the Washington State Department of Transportation Consultant Service's Procedures Manual M27-50 and revisions thereto.

XII

Venue, Applicable Law and Personal Jurisdiction

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right

of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in Thurston County.

XIII Legal Relations

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREE-MENT. This contract shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the STATE, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the STATE shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the STATE and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the STATE shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the STATE during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

Insurance Coverage

- Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit. (Applicable only if CONSULTANT is using WSDOT vehicle.)

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washing-

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ton, Department of Transportation will be named on all policies as an additional insured. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by the AGREE-MENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Consultant Administrator Washington State Department of Transportation Transportation Building P.O. Box 47323 Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

The CONSULTANT's professional liability to the STATE shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The STATE will pay no progress payments under Section V until the Consultant has fully complied with this section. This remedy is not exclusive; and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

XIV Extra Work

- A. The STATE may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. However, if the STATE decides that the facts justify it, the STATE may receive and act upon a claim submitted before final payment of the AGREE-MENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and condition of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

X

Endorsement of Plans

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

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XVI

Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the work in progress.

XVII

Certification of the Consultant and the State

Attached hereto as Exhibit "A-1", are the Certifications of the CONSULTANT and the STATE, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters - primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in AGREEMENTS over \$100.000.

XVIII

Complete Agreement

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

XIX

Execution and Acceptance

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

<u>By</u> ______ By

Assistant Secretary for the Environmental and Engineering Service Center

Any modification, change or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

1999 Professional Services Consultant Agreement Task Order — Negotiated Hourly Rates

1999 PROFESSIONAL SERVICES CONSULTANT AGREEMENT TASK ORDER NEGOTIATED HOURLY RATES		Organization and Address	
Agreement Number		Federal I.D. or S.S. Number	1099 Form Required?
Completion Date	Federal Aid Number	Unified Business Identifier (UBI) Number	
(If Applicable)		Project Title and Description of World	k:
DBE Participation YES MBE Participation (Volum	NO%		
YES NO%		Total Amount Authorized	
WBE Participation (Volume YES	ntary)%	Management Reserve Fund Maximum Amount Payable	
THIS AGREEMENT, made an the Washington State Departm hereinafter called the "CONSU	ent of Transportation and the Secretary	, 1999, between th of Transportation, hereinafter called the "	ne State of Washington, acting through 'STATE", and the above organization
WITNESSETH THAT:	res to accomplish the above referenced	DDOIECT and	
WHEREAS, the STATE does to	•	uired commitment and therefore deems it	advisable and desirable to engage the
	NT represents that he/she is in complia willingness to furnish Consulting serv	ance with the Washington State Statutes relices to the STATE.	elating to professional registration, if
	deration of the terms, conditions, coven o agree as follows:	nants and performance contained herein, or	r attached and incorporated and made
	IENT shall consist of the above described CONSULTANT shall furnish all service	I Description of Work d work and services as herein defined and n ces, labor and related equipment necessary	
The Seepe of Work for this pr		II ope of Work d hereto, and by this reference made a par	t of this AGREEMENT.
The Scope of Work for this pr			

Each item of work under this AGREEMENT will be provided by Task Assignment(s). Each assignment will be individually negotiated with the CONSULTANT. The amount established for each assignment will be the maximum amount payable for that assignment unless modified in writing by the STATE.

III General Requirements

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the STATE. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the STATE. The CONSULT-ANT shall attend coordination, progress and presentation meetings with the STATE or such Federal, Community, city or County officials, groups or individuals as may be requested by the STATE. The STATE will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the STATE and the CONSULT-ANT and shown in Exhibit "B". The CONSULTANT shall prepare a monthly progress report, in a form approved by the STATE, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women Business Enterprises (WBE) if required, shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "E". All Reports, PS&E materials and other data, furnished to the CONSULT-ANT by the STATE shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULT-ANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are property of the STATE. Reuse by the STATE or by others acting through or on behalf of the STATE of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULT-

IV

Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the STATE. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the STATE, in the event of a delay attributable to the STATE, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the STATE is required to extend the established completion time.

V

Payment

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

 Hourly Rates: The CONSULTANT shall be paid by the STATE for work done, based upon the negotiated hourly rates shown in Exhibit "C" attached hereto and by this reference made part of this AGREE-MENT. The rates listed shall be applicable for the first twelve (12) month period and shall be subject to negotiation for the following twelve (12) month period upon request of the CONSULTANT or the STATE. If negotiations are not conducted for the second, or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this AGREE-MENT, or subsequent written authorization(s) from the STATE shall be utilized for the life of the AGREEMENT. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.

In the event renegotiation of the hourly rates is conducted, the STATE reserves the right to audit for any change in the overhead rate currently in use by the CONSULTANT and modify the hourly rates to be paid to the CONSULTANT subsequent to the renegotiation accordingly. Any changes in the CONSULTANT's fixed hourly rates may include salary or overhead adjustments.

- . Direct Non-Salary Costs: Direct non-salary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the STATE. The CONSULT-ANT shall comply with the rules and regulations regarding travel costs in accordance with the STATE Department of Transportation Directive D 13-50 and revisions thereto. The billing for direct nonsalary costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the services provided under this AGREEMENT.
- 8. Management Reserve Fund: The STATE may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this Agreement. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work".
- 4. Maximum Amount Payable: The maximum amount payable for completion of work under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The maximum amount payable includes the Management Reserve Fund, but does not include payment for extra work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREE-MENT.
- 5. Monthly Progress Payments: Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly invoices shall be supported by detailed statements for hours expended at the rates established in Exhibit "C", including names and classifications of all employees, and invoices for all direct non-salary expenses. To provide a means of verifying the invoiced salary costs for the CONSULTANT's employees, the STATE may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates and present duties of those employees performing work on the PROJECT at the time of the interview.

- Inspection of Cost Records: The CONSULTANT and his/her subconsultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three years after final payment, the cost records and accounts pertaining to this AGREE-MENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit is started before the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The three (3) year retention period begins when the CONSULTANT receives final payment.
- Final Payment: Final payment of any balance due the CONSULT-ANT of the gross amount earned will be made promptly upon its verification by the STATE after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the STATE unless such claims are specifically reserved in writing and transmitted to the STATE by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULT-ANT, the CONSULTANT will refund such overpayment to the STATE within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT or any claims relating to the validity of a finding by the STATE of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the STATE for audit findings.

Subcontracting

The STATE permits subcontracts for those items of work as shown in Exhibit "D" to this AGREEMENT.

Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit "D", attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this Agreement.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for subcontracting shall create, between the STATE and subcontractor, any contract or any other relationship.

Employment

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent

upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation $or the \,STATE, except \, regularly \, retired \, employees, \, without \, written \, consent$ of the public employer of such person.

Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services.

The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- Compliance with Regulations: The CONSULTANT shall comply with the Regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710.405(b) and Title VI of the Civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- Solicitations for Subconsultants, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified

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Audit Guide for Consultants August 1999 by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.

D. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives.

Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or
 - Cancellation, termination or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CONSULT-ANT may request the United States to enter into such litigation to protect the interests of the United States.
- G. Unfair Employment Practices: The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O.77-13 of the Governor of the State of Washington which prohibit unfair employment practices.

IX

Termination of Agreement

The right is reserved by the STATE to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at time of termination of this AGREEMENT, plus any direct nonsalary costs incurred at the time of termination of this AGREEMENT.

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the

CONSULTANT shall immediately reimburse the STATE for any excess paid.

If the services of the CONSULTANT are terminated by the STATE for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULT-ANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination; the cost to the STATE of employing another firm to complete the work required and the time which maybe required to do so, and other factors which affect the value to the STATE of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the STATE in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the STATE. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the STATE, if the STATE so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the STATE's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the STATE shall not constitute a waiver by the STATE of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the STATE. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X Changes of Work

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

XI Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this

AGREEMENT, provided however, that if an action is brought challenging the Secretary's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in the Washington State Department of Transportation Consultant Service's Procedures Manual M27-50 and revisions thereto.

XII

Venue, Applicable Law and Personal Jurisdiction

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in Thurston County.

XIII Legal Relations

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREE-MENT. This contract shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the STATE, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the STATE shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the STATE and, solely for the purpose of this indemnification and defense, the CONSULT-ANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the STATE shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the STATE during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

5

Insurance Coverage

01/99

- Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit. (Applicable only if CONSULTANT is using WSDOT vehicle.)

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washington, Department of Transportation will be named on all policies as an additional insured. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by the AGREE-MENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Consultant Administrator Washington State Department of Transportation Transportation Building P.O. Box 47323 Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

The CONSULTANT's professional liability to the STATE shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The STATE will pay no progress payments under Section V until the Consultant has fully complied with this section. This remedy is not exclusive; and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

XIV Extra Work

- A. The STATE may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. However, if the STATE decides that the facts justify it, the STATE may receive and act upon a claim submitted before final payment of the AGREE-MENT

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- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and condition of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XV

Endorsement of Plans

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

XVI

Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the work in progress.

XVII

Certification of the Consultant and the State

Attached hereto as Exhibit "A-1", are the Certifications of the CONSULTANT and the STATE, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters - primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in AGREEMENTS over \$100,000.

XVIII

Complete Agreement

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

XIX

Execution and Acceptance

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

By By

Assistant Secretary for the Environmental and Engineering Service Center

Any modification, change or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

1999 Professional Services Consultant Agreement — Provisional Hourly Rates

1999 PROFESSIONAL SERVICES CONSULTANT AGREEMENT PROVISIONAL HOURLY RATES		Organization and Address		
Agreement Number		Federal I.D. or S.S. Number	1099 Form Required?	
		Unified Business Identifier (UBI) Number		
Completion Date	Completion Date Federal Aid Number (If Applicable)		Project Title and Description of Work:	
DBE Participation YES	NO%			
MBE Participation (Voluntary) YES NO% WBE Participation (Voluntary) YES NO%		Total Amount Authorized Management Reserve Fund Maximum Amount Payable		
		, 1999, between th , 1999, between th of Transportation, hereinafter called the "	e State of Washington, acting through STATE", and the above organization	
WHEREAS, the STATE does no	to accomplish the above referenced F ot have sufficient staff to meet the requ to provide the necessary services for t	nired commitment and therefore deems it	advisable and desirable to engage the	
	T represents that he/she is in compliantial represents to furnish Consulting services.	nce with the Washington State Statutes reces to the STATE.	elating to professional registration, if	
NOW THEREFORE, in conside a part hereof, the parties hereto a		ants and performance contained herein, or	attached and incorporated and made	
	NT shall consist of the above described ONSULTANT shall furnish all service	I escription of Work work and services as herein defined and ness, labor and related equipment necessary		
The Scope of Work for this proj		II pe of Work hereto, and by this reference made a part	t of this AGREEMENT.	

Ш **General Requirements**

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the STATE. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the STATE. The CONSULT-ANT shall attend coordination, progress and presentation meetings with the STATE or such Federal, Community, city or County officials, groups or individuals as may be requested by the STATE. The STATE will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the STATE and the CONSULT-ANT and shown in Exhibit "B". The CONSULTANT shall prepare a monthly progress report, in a form approved by the STATE, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women Owned Business Enterprises (WBE) if required, shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "E." All Reports, PS&E materials and other data, furnished to the CONSULT-ANT by the STATE shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULT-ANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are property of the STATE. Reuse by the STATE or by others acting through or on behalf of the STATE of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULT-ANT.

IV

Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the STATE. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the STATE, in the event of a delay attributable to the STATE, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the STATE is required to extend the established completion time.

v

Payment

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform with all applicable protions of 48 CFR 31.

Hourly Rates: The CONSULTANT shall be paid by the STATE for work done based upon the provisional hourly rates shown in Ehibit "C" attached hereto and by this reference made part of this AGREE-MENT. The actual hourly rates will be determined by an audit of the CONSULTANT's last completed fiscal year and/or their current projected fiscal year. The provisional and/or audited rates listed shall be applicable for the first twelve (12) month period and shall be subject to negotiation for the following twelve (12) month period upon request of the CONSULTANT or the STATE. If negotiations are not conducted for the second, or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this AGREEMENT, or subsequent written

authorization(s) from the STATE shall be utilized for the life of the AGREEMENT. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.

In the event renegotiation of the hourly rates is conducted, the STATE reserves the right to audit for any change in the overhead rate currently in use by the CONSULTANT and modify the hourly rates to be paid to the CONSULTANT subsequent to the renegotiation accordingly. Any changes in the CONSULTANT's fixed hourly rates may include salary or overhead adjustments.

- Direct Non-Salary Costs: Direct non-salary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the STATE. The CONSULT-ANT shall comply with the rules and regulations regarding travel costs in accordance with the STATE Department of Transportation Directive D13-50 and revisions thereto. The billing for direct nonsalary costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the services provided under this AGREEMENT.
- Management Reserve Fund: The STATE may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREE-MENT for allowable unforeseen costs, or reimbursing the CON-SULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this Agreement. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work".
- Maximum Amount Payable: The maximum amount payable for completion of work under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The maximum amount payable includes the Management Reserve Fund, but does not include payment for extra work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREE-
- Monthly Progress Payments: Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly invoices shall be supported by detailed statements for hours expended at the rates established in Exhibit "C", including names and classifications of all employees, and invoices for all direct non-salary expenses. To provide a means of verifying the invoiced salary costs for the CONSULTANT's employees, the STATE may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates and present duties of those employees performing work on the PROJECT at the time of the interview
- Inspection of Cost Records: The CONSULTANT and his/her subconsultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three (3) years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit is started

before the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The three (3) year retention period begins when the CONSULTANT receives final payment.

Final Payment: Final payment of any balance due the CONSULT-ANT of the gross amount earned will be made promptly upon its verification by the STATE after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the STATE unless such claims are specifically reserved in writing and transmitted to the STATE by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULT-ANT, the CONSULTANT will refund such overpayment to the STATE within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT or any claims relating to the validity of a finding by the STATE of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the STATE for audit findings.

Subcontracting

The STATE permits subcontracts for those items of work as shown in Exhibit "D "to this AGREEMENT.

Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit "D", attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this Agreement.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for subcontracting shall create, between the STATE and subcontractor, any contract or any other relationship.

Employment

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein. shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation $or the \, STATE, except \, regularly \, retired \, employees, \, without \, written \, consent$ of the public employer of such person.

VIII

Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services.

The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- Compliance with Regulations: The CONSULTANT shall comply with all Regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710,405(b) and Title VI of the Civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations
- Solicitations for Subconsultants, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.

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Audit Guide for Consultants August 1999

D. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives.

Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or
 - Cancellation, termination or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- G. Unfair Employment Practices: The CONSULTANT shall comply with RCW 49,60,180 and Executive Order number E.O.77-13 of the Governor of the State of Washington which prohibit unfair employment practices.

IX

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In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at time of termination of this AGREEMENT, plus any direct nonsalary costs incurred at the time of termination of this AGREEMENT.

No payment shall be made for any work completed after ten days following receipt by the CONSULTANT of the Notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the STATE for any excess paid.

If the services of the CONSULTANT are terminated by the STATE for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULT-ANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination; the cost to the STATE of employing another firm to complete the work required and the time which maybe required to do so, and other factors which affect the value to the STATE of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the STATE in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the STATE. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the STATE, if the STATE so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the STATE's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the STATE shall not constitute a waiver by the STATE of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the STATE. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

Changes of Work

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

X1 Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging the Secretary's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in the Washington State Department of Transportation Consultant Service's Procedures Manual M27-50 and revisions thereto.

XII

Venue, Applicable Law and Personal Jurisdiction

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in Thurston County.

XIII Legal Relations

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREE-MENT. This contract shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided turther that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the STATE, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the STATE shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the STATE and, solely for the purpose of this indemnification and defense, the CONSULT-ANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the STATE shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the STATE during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for

bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).

C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit. (Applicable only if CONSULTANT is using WSDOT vehicle.)

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washington, Department of Transportation will be named on all policies as an additional insured. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by the AGREE-MENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14 days) of the execution of this AGREEMENT to:

Consultant Administrator Washington State Department of Transportation Transportation Building P.O. Box 47323 Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

The CONSULTANT's professional liability to the STATE shall be limited to the amount payable under this AGREEMENT or one million dollars (\$1,000,000), whichever is the greater. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The STATE will pay no progress payments under Section V until the Consultant has fully complied with this section. This remedy is not exclusive; and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

Extra Work

- A. The STATE may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be perferenced.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. However, if the STATE decides that the facts justify it, the STATE may receive and act upon a claim submitted before final payment of the AGREE-MENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.

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E. Notwithstanding the terms and condition of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

$\mathbf{x}\mathbf{v}$

Endorsement of Plans

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

XVI

Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the work in progress.

XVII

Certification of the Consultant and the State

Attached hereto as Exhibit "A-1", are the Certifications of the CONSULTANT and the STATE, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters - primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in AGREEMENTS over \$100,000.

XVIII

Complete Agreement

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

XIX

Execution and Acceptance

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

Ву	Ву
	Assistant Secretary for the Environmental and Engineering Service Center

Any modification, change or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

1999 Professional Services Consultant Agreement Task Order — Provisional Hourly Rates

1999 PROFESSIONAL SERVICES CONSULTANT AGREEMENT TASK ORDER PROVISIONAL HOURLY RATES		Organization and Address		
Agreement Number		Federal I.D. or S.S. Number	1099 Form Required? YES NO	
Unified Business Identifier (UBI) Number	Project Title and Description of Work:		
Completion Date Federal Aid Number (If Applicable)		!		
DBE Participation YES MBE Participation (Voluntary) YES WBE Participation (Voluntary) YES	NO% NO%	Total Amount Authorized Management Reserve Fund Maximum Amount Payable		
	Transportation and the Secretary	, 1999, between the of Transportation, hereinafter called the "		
WHEREAS, the STATE desires to a WHEREAS, the STATE does not has assistance of a CONSULTANT to p	ve sufficient staff to meet the requ	uired commitment and therefore deems it a	ndvisable and desirable to engage the	
WHEREAS, the CONSULTANT re		nce with the Washington State Statutes reces to the STATE.	lating to professional registration, if	
NOW THEREFORE, in consideration part hereof, the parties hereto agree		ants and performance contained herein, or	attached and incorporated and made	
	shall consist of the above described SULTANT shall furnish all service	I escription of Work I work and services as herein defined and ne es, labor and related equipment necessary		
The Scope of Work for this project i		II pe of Work hereto, and by this reference made a part	of this AGREEMENT.	

Each item of work undert this AGREEMENT will be provided by Task Assignment(s). Each assignment will be individually negotiated with the CONSULTANT. The amount established for each assignment will be the maximum amount payable for that assignment unless modified in writing by the STATE.

General Requirements

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the STATE. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the STATE. The CONSULT-ANT shall attend coordination, progress and presentation meetings with the STATE or such Federal, Community, city or County officials, groups or individuals as may be requested by the STATE. The STATE will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the STATE and the CONSULT-ANT and shown in Exhibit "B". The CONSULTANT shall prepare a monthly progress report, in a form approved by the STATE, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women Business Enterprises (WBE) if required, shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "E" All Reports, PS&E materials and other data, furnished to the CONSULT-ANT by the STATE shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULT-ANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are property of the STATE. Reuse by the STATE or by others acting through or on behalf of the STATE of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULT-ANT.

Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the STATE. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the STATE, in the event of a delay attributable to the STATE, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the STATE is required to extend the established completion time.

Payment

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

Hourly Rates: The CONSULTANT shall be paid by the STATE for work done, based upon the provisional hourly rates shown in Exhibit "C" attached hereto and by this reference made part of this AGREE-MENT. The actual hourly rates will be determined by an audit of the CONSULTANT's last completed fiscal year and/or their current projected fiscal year. The provisional and/or audited rates listed shall be applicable for the first twelve (12) month period and shall be subject to negotiation for the following twelve (12) month period upon request of the CONSULTANT or the STATE. If negotiations are not conducted for the second, or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this AGREEMENT, or subsequent written authorization(s) from the STATE shall be utilized for the life of the AGREEMENT. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.

In the event renegotiation of the hourly rates is conducted, the STATE reserves the right to audit for any change in the overhead rate currently in use by the CONSULTANT and modify the hourly rates to be paid to the CONSULTANT subsequent to the renegotiation accordingly. Any changes in the CONSULTANT's fixed hourly rates may include salary or overhead adjustments.

- Direct Non-Salary Costs: Direct non-salary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the STATE. The CONSULT-ANT shall comply with the rules and regulations regarding travel costs in accordance with the STATE Department of Transportation Directive D13-50 and revisions thereto. The billing for direct nonsalary costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the services provided under this AGREEMENT.
- Management Reserve Fund: The STATE may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREE-MENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work".
- Maximum Amount Payable: The maximum amount payable for completion of work under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The maximum amount payable includes the Management Reserve Fund, but does not include payment for extra work as stipulated in Section XIV, "Extra Work. "No minimum amount payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this agreement with the payable is guaranteed under theMENT.
- Monthly Progress Payments: Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly invoices shall be supported by detailed statements for hours expended at the rates established in Exhibit "C", including names and classifications of all employees, and invoices for all direct non-salary expenses. To provide a means of verifying the invoiced salary costs for the CONSULTANT's employees, the STATE may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates and present duties of those employees performing work on the PROJECT at the time of the interview.

- 6. Inspection of Cost Records: The CONSULTANT and his/her subconsultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three (3) years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit is started before the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The three (3) year retention period begins when the CONSULTANT receives final payment.
- 7. Final Payment: Final payment of any balance due the CONSULT-ANT of the gross amount earned will be made promptly upon its verification by the STATE after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the STATE unless such claims are specifically reserved in writing and transmitted to the STATE by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULT-ANT, the CONSULT-ANT will refund such overpayment to the STATE within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT or any claims relating to the validity of a finding by the STATE of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the STATE for audit findings.

VI Subcontracting

The STATE permits subcontracts for those items of work as shown in Exhibit "D" to this AGREEMENT.

Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit "D", attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this Agreement.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for subcontracting shall create, between the STATE and subcontractor, any contract or any other relationship.

VII Employment

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent

upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation or the STATE, except regularly retired employees, without written consent of the public employer of such person.

VIII

Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services.

The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. Compliance with Regulations: The CONSULTANT shall comply with all Regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710.405(b) and Title VI of the civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- B. Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. Solicitations for Subconsultants, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified

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by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handican.

D. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives.

Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

- Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - 1. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or
 - Cancellation, termination or suspension of the contract, in whole
- Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CONSULT-ANT may request the United States to enter into such litigation to protect the interests of the United States.
- Unfair Employment Practices: The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O.77-13 of the Governor of the State of Washington which prohibit unfair employment practices.

Termination of Agreement

The right is reserved by the STATE to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at time of termination of this AGREEMENT, plus any direct nonsalary costs incurred at the time of termination of this AGREEMENT.

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the

CONSULTANT shall immediately reimburse the STATE for any excess

If the services of the CONSULTANT are terminated by the STATE for default on the part of the CONSULTANT, the above formula for payment

In such an event, the amount to be paid shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULT-ANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination; the cost to the STATE of employing another firm to complete the work required and the time which maybe required to do so, and other factors which affect the value to the STATE of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the STATE in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the STATE. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the STATE, if the STATE so chooses

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the STATE's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the STATE shall not constitute a waiver by the STATE of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULT-ANT, or for failure of the CONSULTANT to perform work required of it by the STATE. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

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The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging

the Secretary's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in the Washington State Department of Transportation Consultant Service's Procedures Manual M27-50 and revisions thereto.

XII

Venue, Applicable Law and Personal Jurisdiction

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in Thurston County.

XIII Legal Relations

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREE-MENT. This contract shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the STATE, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the STATE shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the STATE and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law. Title 51 RCW.

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Insurance Coverage

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- Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit. (Applicable only if CONSULTANT is using WSDOT vehicle.)

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washington, Department of Transportation will be named on all policies as an additional insured. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by the AGREE-MENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Consultant Administrator Washington State Department of Transportation Transportation Building P.O. Box 47323 Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

The CONSULTANT's professional liability to the STATE shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The STATE will pay no progress payments under Section V until the Consultant has fully complied with this section. This remedy is not exclusive; and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

XIV Extra Work

- A. The STATE may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. However, if the STATE decides that the facts justify it, the STATE may receive and act upon a claim submitted before final payment of the AGREE-MENT.

Audit Guide for Consultants August 1999

- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- Notwithstanding the terms and condition of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

Endorsement of Plans

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the work in progress.

XVII

Certification of the Consultant and the State

Attached hereto as Exhibit "A-1", are the Certifications of the CONSULTANT and the STATE, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters - primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in AGREEMENTS over \$100,000.

XVIII

Complete Agreement

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

Execution and Acceetance

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

Ву	Ву
	Assistant Secretary for the
	Environmental and Engineering Service Center

Any modification, change or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

1999 Professional Services Consultant Agreement — Lump Sum

1999 PROFESSIONAL SERVICES CONSULTANT AGREEMENT LUMP SUM		Organization and Address				
Agreement Number		Federal I.D. or S.S. Number	1099 Form Required? YES NO			
Completion Date Federal Aid Number (If Applicable)		Project Title and Description of Work:				
Unified Business Identifier (UBI) Number						
Lump Sum Amount						
Management Reserve Fund Amount		DBE Participation YES No				
Maximum Amount Payable		WBE Participation (Voluntary) YES NO				
THIS AGREEMENT, made the Washington State Depart hereinafter called the "CON	and entered into this day of _ tment of Transportation and the Secretary SULTANT".	, 1999, between of Transportation, hereinafter called the	n the State of Washington, acting through he "STATE", and the above organization			
WITNESSETH THAT:						
WHEREAS, the STATE des	sires to accomplish the above referenced	PROJECT, and				
	es not have sufficient staff to meet the req .NT to provide the necessary services for		s it advisable and desirable to engage the			
	ANT represents that he/she is in compliant a willingness to furnish Consulting serve		es relating to professional registration, if			
NOW THEREFORE, in con a part hereof, the parties her	sideration of the terms, conditions, coven eto agree as follows:		n, or attached and incorporated and made			
	MENT shall consist of the above described the CONSULTANT shall furnish all service					
· ·		II ope of Work				
The Scope of Work and proj of this AGREEMENT.	Sec jected level of effort required for this proj	ect is detailed in Exhibit "B" attached	hereto, and by this reference made a part			

III General Requirements

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the STATE. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the STATE. The CONSULT-ANT shall attend coordination, progress and presentation meetings with the STATE or such Federal, Community, City or County officials, groups or individuals as may be requested by the STATE. The STATE will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the STATE and the CONSULT-ANT and shown in Exhibit "B" attached hereto and made part of this AGREEMENT. The CONSULTANT shall prepare a monthly progress report, in a form approved by the STATE, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women Business Enterprises (WBE) if required, shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each form and their certification number will be shown on Exhibit "E". All reports, PS&E materials and other data, furnished to the CONSULTANT by the STATE shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT and are property of the STATE. Reuse by the STATE or by others acting through on behalf of the STATE of any such instruments of service, not occurring as part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

IV Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the STATE. All work under

this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the STATE, in the event of a delay attributable to the STATE, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the STATE is required to extend the established completion time.

V Payment

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work". The CONSULTANT shall conform with all applicable portions of 48 CFR 31. The estimate in support of the lump sum amount is attached hereto as Exhibit "C" and hereby made part of this AGREEMENT.

- A. Lump Sum Agreement: Payment for all consulting services for this project shall be on the basis of a lump sum amount as shown in the heading of this AGREEMENT.
 - Management Reserve Fund: The STATE may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in

serve Fund is shown in the heading of the AGREEMENT. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work".

- Maximum Total Amount Payable: The Maximum Total Amount Payable, by the STATE to the CONSULTANT under this AGREEMENT, shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Lump Sum Amount and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for extra work as stipulated in Section XIV. "Extra Work"
- 3. Monthly Progress Payments: Partial payments may be made upon request of the CONSULTANT to cover the percentage of work completed, and are not to be more frequent than one (1) per month. To provide a means of verifying the invoiced salary costs for the CONSULTANT's employees, the STATE may conduct employee interviews. These interviews may consist of recording the names, titles, salary rate and present duties of those employees performing work on the PROJECT at the time of the interview.
- C. Final Payment: Final payment of any balance due the CONSULT-ANT of the gross amount earned will be made promptly upon its verification by the STATE after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the STATE unless such claims are specifically reserved in writing and transmitted to the STATE by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and that at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT agrees to refund such overpayment to the STATE within thirty (30) days of notice if any such payment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the STATE of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the STATE for audit findings.

D. Inspection of Cost Records: The CONSULTANT and his/her sub-consultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three (3) years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

VI Subcontracting

The STATE permits subcontracts for those items of work as shown in Exhibit "D" to this AGREEMENT.

Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit "D", attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultants shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for subcontracting shall create, between the STATE and subcontractor, any contract or any other relationship.

VII

Employment

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation or the STATE, except regularly retired employees, without written consent of the public employer of such person.

VIII

Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services. The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

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- A. Compliance With Regulations: The CONSULTANT shall comply with all Regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710.405(b) and Title VI of the civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- B. Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. Solicitations for Subconsultants, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.
- D. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - Withholding of payments to the CONSULTANT under the contact until the CONSULTANT complies, and/or
 - Cancellation, termination or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

Audit Guide for Consultants August 1999 Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit "D", attached hereto and by this reference made a part of this AGREEMENT.

A. Compliance With Regulations: The CONSULTANT shall comply with all Regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code

The work of the subconsultants shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for subcontracting shall create, between the STATE and subcontractor, any contract or any other relationship.

VII

Employment

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation or the STATE, except regularly retired employees, without written consent of the public employer of such person.

VIII

Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services. The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. Compliance With Regulations: The CONSULTANT shall comply with all Regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710.405(b) and Title VI of the civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- B. Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. Solicitations for Subconsultants, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.
- D. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - 1. Withholding of payments to the CONSULTANT under the contact until the CONSULTANT complies, and/or
 - Cancellation, termination or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

G. Unfair Employment Practices: The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O 77-13 of the Governor of the State of Washington which prohibit unfair employment practices.

IX

Termination of Agreement

The right is reserved by the STATE to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT which, when added to any payments previously made, shall total the same percentage of the Lump Sum Amount as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

No payment shall be made for any work completed after ten days following receipt by the CONSULTANT of the Notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the STATE for any excess paid.

If the services of the CONSULTANT are terminated by the STATE for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULT-ANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination; the cost to the STATE of employing another firm to complete the work required and the time which maybe required to do so, and other factors which affect the value to the STATE of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the STATE in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the STATE. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the STATE, if the STATE so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the STATE's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the STATE shall not constitute a waiver by the STATE of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the STATE. Forbearance of any rights under the AGREEMENT will

not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X Changes of Work

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

XI Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging the Secretary's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in the Washington State Department of Transportation Consultant Service's Procedures Manual M27-50 and revisions thereto.

XII

Venue, Applicable Law and Personal Jurisdiction

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in Thurston County.

XIII Legal Relations

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREE-MENT. This contract shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the STATE, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the STATE shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the STATE and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the STATE shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the STATE during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the C. AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit.
 (Applicable only if CONSULTANT is using WSDOT vehicle.)

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washington, Department of Transportation shall be named on all policies as an additional insurance. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by the AGREE-MENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Consultant Administrator Washington State Department of Transportation Transportation Building P.O. Box 47323 Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

The CONSULTANT's professional liability to the STATE shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The STATE will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

XIV

Extra Work

- A. The STATE may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit its "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. However, if the STATE decides that the facts justify it, the STATE may receive and act upon a claim submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and condition of paragraphs (a) and (b) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

$\mathbf{x}\mathbf{v}$

Endorsement of Plans

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

XVI Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the work in progress.

XVII

Certification of the Consultant and the State

Attached hereto as Exhibit "A-1", are the Certifications of the CONSULTANT and the STATE, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters - primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in AGREEMENTS over \$100,000.

XVIII

Complete Agreement

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREE-MENT.

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effect. The CONSULTANT does hereby ratify an	XIX Execution and Acceptance ed in several counterparts, each of which shall be deemed to be an original having identical legal d adopt all statements, representations, warranties, covenants, and agreements contained in the
	by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms
In witness whereof, the parties hereto have execute	d this AGREEMENT as of the day and year first above written.
	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
Ву	Ву
	Assistant Secretary for the
	Assistant Secretary for the Environmental and Engineering Service Center
Any modification, change or reformation of this AC	Assistant Secretary for the Environmental and Engineering Service Center Environmental and Engineering Service Center GREEMENT shall require approval as to form by the Office of the Attorney General.
Any modification, change or reformation of this AC	Environmental and Engineering Service Center
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Any modification, change or reformation of this Ad	Environmental and Engineering Service Center

Chapter 18 Conflict of Interest — Who Me?

Chapter 18

The following is being provided for information purposes only. In part, it is the opinion of the Audit Office, i.e., it is not based upon legal counsel. Therefore, the reader should come to their own conclusions.

In rare cases, auditors do observe situations which approach a conflict of interest between the consultant community and WSDOT.

The reader needs to be aware of this potential for conflict of interest and the implications which may result from such activity.

Basic Definition

Webster's New World Dictionary, Second College edition, defines conflict of interest as "a conflict between one's obligation to the public good and one's self-interest, as in the case of a public officeholder who owns stock in a company seeking government contracts."

48 CFR 3.101-1 discusses standards of conduct. "Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of conflict of interest in Government-contractor relationships." Part 3.101-2 states "As a rule, no Government employee may solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who (a) has or is seeking to obtain Government business with the employee's agency, (b) conducts activities that are regulated by the employee's agency, or (c) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties."

In 1994, the Washington State Legislature passed a new state ethics law that applies to all state employees and officers.

The basic guiding principle is that a state officer or employee may not use his or her public position for private benefit or gain. This basic guiding principle is reflected in the following summary of four general provisions of the ethics law.

- 1. A state officer or employee may not have a financial or other interest, or engage in any business or professional activity that is in conflict with his or her official duties. ESSB 6111, Paragraph 102.
- 2. A state officer or employee may not use his or her official position to secure special privileges for himself or herself or any other person. ESSB 6111, Paragraph 107.

- 3. A state officer or employee may not receive any compensation or gift from a source, except the state, for performing or deferring the performance of any official duty. There is no minimum value for a gift. ESSB 6111, Paragraph 111.
- 4. A state officer or employee may not receive a gift or favor, if it could be reasonably expected to influence or reward his or her vote, judgment, action, or inaction. There is no minimum value for a gift. ESSB 6111, Paragraph 114.

Arm's Length Transactions

Consultants need to be aware of WSDOT policies that may restrict the eligibility of former WSDOT employees, hired by the consultant, from working in an official capacity and dealing with the department. The Audit Office recommends that if the consultants have any concerns regarding this area, they should contact the WSDOT Audit Office located in the WSDOT Olympia Service Center building in Olympia.

Be aware of the following:

Private firms should not attempt to entertain WSDOT employees. This includes buying their lunches and/or dinners. Likewise, WSDOT employees should not accept any form of gratuity including paid lunches and/or dinners from any private firm doing business with or having a potential of doing business with WSDOT. WSDOT does not consider paying a consultant with federal and state tax dollars to entertain WSDOT employees to be a legitimate business expense.

These types of costs should not be included in the overhead calculations, and they should never be billed as direct nonsalary costs to a WSDOT agreement. The bottom line is that if there is any question as to whether or not something is a conflict of interest, do not do it!

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Chapter 19

Sole Proprietorships — Wage and Billing Rates

Sole Proprietorships — Wage and Billing Rates

Chapter 19

This chapter address the following areas:

- Establishing the sole proprietor's billing rate.
- Establishing the overhead rate for a sole proprietorship.
- Establishing all-inclusive hourly rates for sole proprietorship firms.

A sole proprietorship is a company owned solely by one person. For tax purposes, the company's net profits become the owner's taxable income, and the net losses become the owner's net loss for tax purposes.

For WSDOT purposes, there are several ways to look at calculating gross wages, hourly pay rates, and billing rates.

Sole Proprietor's Billing Rate

As discussed in Chapter 20, the sole proprietor typically has a billing rate for services which is based on the going market rate for like services elsewhere. In reality, the owner of the firm takes draws against the profits of the firm. This results in a pay structure from month to month which can vary depending upon the firm's business, and the owner's need for cash.

Historically at WSDOT, the salary rate or billing rate for a sole proprietor has been negotiated on a case by case basis since the individual has no established salary.

Overhead Rate

The sole proprietor may or may not have employees. In developing a firm's overhead rate, we then have two scenarios to work with.

Sole Proprietorships With No Employees

The auditors will want to know the exact number of hours the owner has worked directly on projects and indirectly on administrative matters. These hours, supported by time sheets, will ultimately play a role in development of the firm's overhead rate.

Next, just as with any other firm, the indirect costs of the firm will be identified and verified by audit. An overhead rate will be calculated by dividing total allowable indirect costs by total direct labor. This is used for possible negotiation purposes.

This type of information is provided to management during a preaward audit, and the agreement for services negotiated accordingly.

The problem for the sole proprietor, or WSDOT manager, is that at the time of a post audit, if no preaward audit has been conducted, billed costs are usually questioned. This for the simple fact that the billed costs may not reflect actual costs or negotiated rates.

Direct nonsalary costs, and other associated costs which may be billed for services provided, must follow the basic guidelines indicated in Chapters 6 and 7.

Sole Proprietorships With Employees

In this scenario we have the same situation as described above in determining the owner's labor costs. The employees are normally paid an established salary.

This method uses a computed labor rate for the owner, identifying direct and indirect costs. The direct cost is then added to the direct labor base of the employees, with the computed indirect labor included in the indirect overhead labor value. Dependent upon the draws (salary) taken by the owner, this method should approximate an actual overhead rate for the firm.

In this scenario the key words are computed rates, or values, i.e., we are not talking about actual costs, in the sense of those associated with other type of firms, i.e., their direct labor and overhead costs.

Establishing the Sole Proprietorship All-Inclusive Hourly Rate

Typically, the billing rate for sole proprietorships has been negotiated due to the difficulty in establishing the owner's labor rate, and in establishing an overhead rate that is reasonable.

The method of payment for each type of agreement is up to the WSDOT contracting officer or consultant liaison working with the firm, and may vary from agreement to agreement.

The major problem with both of these scenarios is determining the proprietor's wage rate to be used in calculating the direct labor base. We expect that every sole proprietor would have set an expected, but reasonable, wage rate. Whether this rate is attained or not depends upon the profitability of the firm. Care must be taken to ensure that wage rates charged to WSDOT are not inflated to make up for losses on other agreements.

Factors to consider when determining a sole proprietor's wage rate include:

- 1. Total direct labor hours and total indirect labor hours.
- 2. Total annual amount of draws.
- 3. Proprietor's taxable income.
- 4. Proprietor's billing rate.
- 5. Proprietor's budgeted wage rate.

The decision as to what the sole proprietor's wage rate actually is will be made on the auditor's best judgment with the data available. Ideally, the proprietor will have time records identifying direct and indirect labor hours and draws will be approximately equal to a reasonable and expected wage rate.

Summary

In the end, the salary billing rate, overhead rate, and fixed fee for a sole proprietor or partners in a partnership may have to be negotiated with the WSDOT contracting officer.

Information developed during a preaward audit, or after the fact, during a post audit, at best may approximate what the actual costs are or should be for performing the work.

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Chapter 20

Billing Rates — Sole Proprietor and Partnerships

Billing Rates — Sole Proprietor, Partnerships

Chapter 20

General

For most firms, billing rates are usually pre-established and published hourly rates charged to most of their clients. Sometimes these rates vary depending upon the type of work to be performed or are based on "the going rate" or on what "the market will bear."

When preparing cost proposals for WSDOT, the firm's billing rates must be calculated in a different way.

Billing rates accepted by WSDOT are made up of three components.

Hourly Pay Rate

First is the individual employee's hourly pay rate. This rate usually will be the same rate as shown on the employee's payroll records and in his/her personnel file. The WSDOT auditor will review the company's payroll and personnel records to verify the employee's actual pay rate.

Application of an Overhead Rate

Second is the application of an overhead rate. The WSDOT auditor will calculate the accepted overhead rate based upon the firm's stated overhead rate as adjusted to comply with 48 CFR 31, WSDOT Cost Principles, and WSDOT Travel Directive D 13-50. This rate is calculated by dividing the adjusted overhead costs by the adjusted direct labor. (To accomplish this, the auditor will need to review, for the audit period, the firm's time sheets, monthly and/or quarterly and/or annual time and payroll summaries, vendor files, tax records, general ledger, trial balance, income statement, and balance sheet.)

Fixed Fee

Third is the profit rate or fixed fee to be allowed. This is determined in one of two ways. A profit percentage can be applied to the direct labor rate. This is a negotiated rate between the firm and the negotiating officer. The rate usually ranges between 17 and 35 percent of direct labor depending upon the size, difficulty, and complexity of the agreement, the extent of supervising subconsultants, etc.

The other method is to negotiate a fixed dollar amount for profit. A percentage of the profit amount is then billed each month to equal the percentage of the job completed.

Billing Rate

All three of the above factors are then added together to arrive at an individual's billing rate. This rate is then applied to every hour which that employee works on the WSDOT project.

Some agreements may not list individual employees' billing rates, but instead may list billing rates by classes of employees such as principals, senior engineers, engineers, drafters, etc. In this case, billing must still be based on actual payroll rates for each employee. WSDOT does not allow the use of average rates.

Some employees may actually earn less than the agreed upon rate, while others may earn more. For this type of agreement, it will be necessary for the WSDOT auditor to verify that the employees being billed in a specific class are actually classified as such and are being paid accordingly.

Rate Adjustment

Proposed, projected, and approved billing rates may be adjusted, depending upon the language of the agreement.

Part-Time Employees

Part-time employees who do not receive all of the firm's fringe benefits should be using a lower billing rate than the full-time employees as the overhead costs associated with them are less than with the full-time employees. If the firm has a 30 percent benefit package and an accepted overhead rate of 150 percent, then a part-time employee who receives no benefits should be using an overhead rate of 120 percent when calculating his/her billing rate. The profit rate remains the same.

Contract Labor (Employees)

Hours for independent contractors and contract employees (those hired through an employment agency or independently), are not to be included with the firm's employees when invoicing WSDOT. These workers should be billed to WSDOT at the actual cost to the firm (with no markup) under the direct nonsalary costs section of the invoice. Also, payments to independent contractors and contract employees are to be excluded from the direct labor base used in calculating the firm's overhead rate.

Sole Proprietors' and Partnership's Wage Rates and Billing Rates

A sole proprietorship is a company owned by one person. For tax purposes, the company's net profits become the proprietor's or partner's taxable income, and the company's net losses become the proprietor's net loss for tax purposes.

For WSDOT purposes, there are several ways to look at calculating gross wages, hourly pay rates, and billing rates.

Gross Wages

Gross wages should at least be equal to the net income shown on the individual's tax return. But other items may have to be added to the net income or draws when calculating the individual's gross wages for WSDOT purposes. Auto allowance, insurance premiums, retirement plans, savings accounts, investments, meals, and other similar expenses are some examples. Where larger companies include some of these as employee benefits in the overhead, a sole proprietorship or partnership may have to include them in their gross wages.

Auto allowance is taxable to the individual to the extent that receipts are greater than expenses incurred. The amount allowable for overhead is the amount attributable to the business, either actual or percentage wise. Properly documented mileage reimbursements are not taxable, but are totally included in overhead.

Insurance and retirement plans are legitimate business expenses provided that they are not excessive in amount and the business is not the beneficiary.

Savings and investment accounts are taxable income to the individual for the amounts deposited during the current year plus the interest earned during the year.

Meal expenses are business expenses only to the extent that they are truly business related. Everyday breakfast, lunch and/or dinner costs are not business related and should be taken out of overhead and added to the individual's income.

In summary, gross wages for a sole proprietor should include all income taken plus the value of any expenses which directly benefit the owner over and above the normal business amount.

Hourly Rates

Sole proprietors usually bill a predetermined hourly rate. This rate is usually as high as the owner feels is reasonable or all that competition will allow based on competitive pricing.

For small businesses, competition and seasonal workloads are crucial to their survival. Their rates may generally go up and down depending on the workload at the time they are bidding a job. If they have little or no work, they will usually lower their rates to a point that will cover their costs but allow nothing for salary or profit.

One method of calculating an hourly rate for the labor distribution of the sole proprietor is to take their gross wages and divide them by the actual number of direct and indirect hours worked to arrive at an hourly rate. Then multiply the hourly rate times the direct and indirect hours to get the direct and indirect labor.

A different method is to take the total dollars billed and divide by the billed hours. This hourly rate times the number of hours billed will equal the direct labor costs. The owner's gross wages minus the direct labor leaves the amount to go into indirect labor.

We may calculate the hourly rate as above, multiply the direct hours times the hourly rate to get the direct labor and multiply the indirect hours times the rate to get the indirect labor. All gross wages over the calculated direct and indirect labor are dropped from the labor base calculations entirely.

If the agreement is to be a cost plus agreement, then the billing rate would be the same as the hourly rate as calculated above. If the agreement is to be all-inclusive hourly rate, then the firm's overhead rate will need to be calculated, as discussed above, and, along with the negotiated profit rate, added to the hourly rate as calculated above. This becomes the sole proprietor's or partner's billing rate.

As you can see, there are many variables to be considered when calculating the worth of an owner to the business entity. Here, we have presented some of them for your consideration. Since there are no existing guidelines as to how we will treat sole proprietors and partnerships, we will make no recommendations, but allow management to decide how they will be treated for WSDOT overhead calculations.

The reader is directed to Chapter 19, which discusses the development of the sole proprietorships billing or salary rate, including the firm's overhead rate.

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Chapter 21 Field Office Overhead Rates

Chapter 21

Field Office Overhead Rates

A field office situation exists when a consultant's employees are performing services on a continuous basis for WSDOT and are working in a WSDOT owned facility or company owned office, independent of a local branch or central office.

Since the consultant employees are not working out of their own offices and are not receiving office support in their day to day activities, the hours billed for them do not qualify for the consultants full overhead rate. They do receive an overhead rate that is reduced for the support they receive from WSDOT.

The purpose of the field rate is to pay the consultant for the fringe benefits and home office support they do provide to their field employees. Usually, the field rate includes full fringe benefits plus a minimum amount for home office support.

The WSDOT Audit Office methodology used for establishing field office overhead rates is as follows:

ABC, Inc. Overhead Schedule December 31, 1997

								Allocation
	Reported		Audit	Audited		_	Home	Field
	Balance	Ref.	Adjust.	Balance	%	Ref.	Overhead	Overhead
Direct Labor Base	\$714,300	(C)	(\$ 100)	\$714,200			\$671,800	\$42,400
Overhead Costs								
B&P Costs	\$ 82,500			\$ 82,500	11.55%	(B)	\$ 80,570	1,931
Indirect Labor	436,700			436,700	61.15	(A)	410,760	25,940
Fringe Benefits	364,100			364,100	50.98	(A)	342,472	21,628
Conferences/Seminars	16,000			16,000	2.24	(B)	15,626	374
Indirect Travel	10,900			10,900	1.53	(B)	10,645	255
Office Supplies	49,100			49,100	6.87	(B)	47,951	1,149
Postage/Freight	9,700			9,700	1.36	(B)	9,473	227
Business Taxes	52,000			52,000	7.28	(A)	48,911	3,089
Legal & Accounting	21,000			21,000	2.94	(B)	20,509	491
Profess. Dues & Licenses	9,400			9,400	1.32	(B)	9,180	220
Insurance	13,700			13,700	1.92	(A)	12,886	814
Depreciation	27,400	(D)	(\$1,800)	25,600	3.58	(B)	25,001	599
Legal & Accounting	18,700			18,700	2.62	(A)	17,589	1,111
Recruit/Emp. Morale	8,300	(E,F,G)	(2,100)	6,200	0.87	(B)	6,055	145
Rent	124,900			124,900	17.49	(B)	121,977	2,923
Utilities	16,400			16,400	2.30	(B)	16,016	384
Maintenance/Repairs	12,700			12,700	1.78	(B)	12,403	297
Leased Equipment	79,900	(H)	(3,900)	76,000	10.64	(B)	74,222	1,778
Telephone	36,800			36,800	5.15	(B)	35,939	861
Less: Cost Allocations	(437,500)			-437,500	-61.26	(B)	(427,263)	(10,238)
Total Overhead Costs	\$952,700		<u>(\$7,800)</u>	\$944,900	132.30%	(B)	\$890,922	\$53,978
Overhead Bata	100.000/			100.000/			100.000/	107.010/
Overhead Rate	<u>133.38</u> %			<u>132.30</u> %			<u>132.62</u> %	<u>127.31</u> %

References

- (A) Allocates field and home office overhead rates in the same proportion as labor.
- (B) Allocates space costs associated with support labor.
- (C) Overtime premium unallowable per 48 CFR 22.103-2.
- (D) Adjust depreciation to agree with tax return 48 CFR 31.205-11(d)(3).
- (E) Local meals unallowable per 48 CFR 31.205-14 and WSDOT Travel Directive D 13-50.
- (F) Donations unallowable per 48 CFR 31.205-8.
- (G) Advertising unallowable per 48 CFR 31.205-1(d).
- (H) Direct project costs unallowable in overhead per 48 CFR 31.202(a).

Computation of Field Allocation Rates

Allocation A

<u>Direct Field Labor</u> = <u>\$42,400.00</u> = 5.94%

Total Direct Labor \$714,200.00

This allocation does not have an affect on the field or home office overhead rates. It was applied to all accounts, the field home office rate would be the same.

This percentage should be applied to expenses common to both field and home office direct labor in equal proportions, i.e., indirect salaries, payroll taxes, group insurance, paid leaves, bonuses, legal, and accounting, etc.

Allocation B

 $\frac{\text{Allocated Support Services (Indirect Salaries x Allocation A)}}{\text{Home Office Direct Labor + Indirect Salaries}} = \frac{\$436,670.00 \times 5.94\%}{\$671,800.00 + \$436,670.00} = 2.34\%$

This rate allocates to the field the "space costs" associated with supportive service labor.

This rate should be applied to rent, supplies, utilities, etc.

Data used in the above calculations:

Direct Field Office Labor
Direct Home Office Labor
Total Direct Labor
\$42,400
\$671,800
\$714,200

Indirect Labor \$436,700

Computation of Field Allocation Rates

Allocation A

<u>Direct Field Labor</u> = Total Direct Labor

This allocation does not have an effect on the field or home office overhead rates. If it was applied to all accounts, the field and home office rates would be the same.

This percentage should be applied to expenses common to both field and home office direct labor in equal proportions, i.e., Indirect Salaries, Payroll Taxes, Group Insurance, Paid Leaves, Bonuses, Legal, Accounting, Personnel, etc.

Allocation B

Allocated Supportive Service (Indirect Salaries x Alloc. A)

Home Office Direct Labor + Indirect Salaries

This rate allocates to the field the "space costs" associated with supportive service labor. This rate should be applied to Rent, Supplies, Utilities, etc.

Data used in calculations:	
Direct Field Office Labor Direct Home Office Labor Total Direct Labor	
Indirect Salaries-Admin. Indirect Salaries-Office Total Indirect Salaries	

The field rate is based upon an application of two different allocation rates to the consultants overhead cost categories.

The first allocation uses the relationship of direct field labor to total direct labor, described below:

The second allocation uses the relationship of indirect salaries and the allocation described above, to home office direct labor and indirect salaries, as described below:

Once these two calculations are made, the allocations are applied to the various line item accounts identified in a firm's overhead schedule. The end result is a value, wrong, right, or indifferent, which is used for payment purposes.

Summary

The primary reason for using a standard methodology, is to approximate the costs and associated level of effort a field office operation might receive from the home or corporate office. And in doing so, be consistent in how WSDOT Audit treats each individual field office situation, to the extent possible.

The underlying theory is that a field office for the most part is self-sufficient. The firm or firms were hired because of their given expertise. Their mission is such that little if any input is probably required from the home operation. Therefore, the associated costs should be minimal for the operation to exist.

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Chapter 22 Advance Agreement on Costs

Chapter 22

Advance Agreement on Costs

During contract negotiations, certain cost items incurred by the consultant or proposed to be billed to WSDOT may be discussed.

The general rule is that many types of costs may be acceptable, subject to restrictions identified in 48 CFR. If an item of cost has been identified as expressly unallowable or ineligible for reimbursement, then under no conditions is the contracting officer allowed or authorized to approve billing or payment for that type of cost.

The firm and WSDOT need to consider long-term ramifications of allowing selected items of cost such as allowance for vehicles.

When proposed costs which appear to be unique come up, we recommend that the Audit Office be involved in the discussion prior to any advance agreement on the allowability of the cost item.

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Chapter 23 Resolution Procedures

Chapter 23

Resolution Procedures

Audit Resolution

The audit resolution process begins when an audit report is issued by the Audit Office. The Audit Resolution Section reviews the report, makes contact with the auditee to gather more information, if necessary, on any findings, and determines the merits of the report. If there are findings, reviews are completed with the consultant, the department's contracting officer, and if required, FHWA, in order to determine the final resolution of the findings. Billings and/or reimbursements are made to the consultant based on the revised audit report and/or administrative settlement. The Audit Resolution Section reviews all appeals and coordinates the collection of moneys due the department.

Audit resolution is not done by the WSDOT Audit Office. The Audit Resolution Section is part of the Design Office which is part of the Envrionmental and Engineering Service Center.

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Chapter 24 Examples of Forms

Chapter 24

Examples of Forms

Examples of forms commonly used by organizations:

- Time Sheets
- Travel Voucher
- Mileage Log
- Copy Log
- Computer Time Log (to be added at a later date)

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Weekly or Semi-Monthly Time Sheet Total Hours Sch. Shift Start | Shift End Shift Information 31 15 30 14 13 Work Schedule 12 11 26 9 10 24 25 Days Employee Name (Last, First, MI.) 23 22 Distribution - Timekeeper, Approving Authority / Personnel, Employee 6 21 Supervisor's Signature 5 19 က 18 2 16 Total Hours Reported Above Sub Total Reported Above Service Request Date (Mo/Dy/Yr) Charge To Cross Org. Code Washington State Department of Transportation Control Section or Work Units Equip. Worked On or Non Part. **Labor Distribution Account Numbers** Soc. Sec. Number Complete with Blue or Black Ink Only Work Operation Standby Holiday Shift Employee's Signature Other Hours Job Number Work Order Group Org. Code □ SHFT □ STBY □ HOLY

NAME (Last, First, Initial)					SSN			OLA	CLASS TITLE				OFFIC	OFFICIAL STATION	
ADDRESS					CITY			-	STATE	ZIP CODE			OFFIC	OFFICIAL RESIDENCE	
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Chapter 25 Audit Criteria

Chapter 25 Audit Criteria

WSDOT audits are conducted in accordance with the generally accepted government auditing standards established by the United States General Accounting Office.

The primary audit criteria used by the WSDOT Audit Office for the audit of consultant agreements is the Federal Acquisition Regulations System 48 Code of Federal Regulations. The secondary audit criteria is the 1994 WSDOT Overhead Policy as issued by the WSDOT Consultant Services Office. In addition, audit criteria is established in the written agreement between WSDOT and the consultant.

The agreement may limit or restrict the billing of certain costs, for example travel and per diem, or the way that a consultant bills labor costs, i.e., no overtime premium on labor costs is allowed.

Chapter 26 includes 48 CFR Part 31 Contracts with Commercial Organizations. This is the primary source of audit criteria pertaining to costs. As stated elsewhere in this guide, the Audit Office does use other parts of 48 CFR to provide guidance in dealing with selected audit issues.

We recommend the reader do at least the following:

• Become familiar with the contents of Part 31 of 48 CFR and read the complete text of the agreement your firms signs with WSDOT.

1992 WSDOT Bonus Policy

The effective date of the 1992 WSDOT Bonus Policy remains April 1, 1992.

All new cost plus fixed fee, hourly billing rate, or lump sum agreements that were signed after April 1, 1992, will use the bonus policy. It will be applied to the consultant's most current completed fiscal year, or the consultant's projected current fiscal year, to determine an overhead rate that will be used for billing purposes.

Any cost plus fixed fee, hourly billing rate, or lump sum supplement that is signed after April 1, 1992, will be subject to the same application of the bonus policy as a new agreement that is signed after April 1, 1992.

WSDOT has a bonus policy which allows firms to obtain reimbursement of bonus costs in accordance with the rules established by the Federal Acquisition Regulations (FAR) 48 CFR 31.205-6.

Participation in Costs

WSDOT uses the FARs as a primary guidance for cost rules and procedures. The following subparts of 48 CFR 31.205-6 address to some extent employee compensation, which includes bonuses. The reader should become familiar with the other subsections of 31.205-6.

31.205-6 Compensation for personal services.

(a) GENERAL Compensation

- (1) "Compensation for personal services must be for work performed by the employee in the current year and must not represent a retroactive adjustment of prior years' salaries or wages..."
- (2) "The compensation in total must be reasonable for the work performed; however, specific restrictions on individual compensation elements must be observed where they are prescribed."
- (3) "The compensation in total must be based upon and conform to the terms and conditions of the contractor's established compensation plan or practice followed so consistently as to imply, in effect, and agreement to make the payment."
- (4) "No presumption of allowability will exist where the contractor introduces major revisions of existing compensation plans or new plans and the contractor
 - (i) Has not notified the cognizant ACO of the changes either before their implementation or within a reasonable period after their implementation, and
 - (ii) Has not provided the Government, either before implementation or within a reasonable period after it, an opportunity to review the allowability of the changes."
- (5) "Costs that are unallowable under other paragraphs of this subpart 31.2 shall not be allowable under this subsection 31.205-6 solely on the basis that they constitute compensation for personal services."
- (b) "Reasonableness. The compensation for personal services paid or accrued to each employee must be reasonable for the work performed. Compensation will be considered reasonable if "each" of the allowable elements making up the employee's compensation package is reasonable. . . In determining the reasonableness of individual elements for particular employees or job classes of employees, consideration should be given to all potentially relevant facts. Facts which may be relevant include general conformity with the compensation practices of other firms of the same size, the compensation practices of other firms in the same industry, the compensation practices of other firms in the same geographic area, the compensation practices of firms engaged in predominantly nongovernment work, and the cost of comparable services obtainable from outside sources."

Reasonableness, as defined by WSDOT for bonuses, limits total bonus compensation to 15 percent of FARs allowable overhead costs as shown in the following examples:

Example 1

Direct Labor Base OH Pool, Excluding Bonus Actual Bonus Paid, not in OH Pool Amount	\$ \$ \$	100,000 120,000 30,000
B=Allowable Bonus Amount		
B=.15[(Overhead Pool 120,000) + Allow. Bonus] B=18,000+.15B B15B=18,000 .85B=18,000 B=\$21,176		
Actual Bonus Paid Allowable Bonus Adjustment to Bonus	\$ \$	30,000 21,176 (8,824)
Overhead Pool, Excluding Bonus Allowable Bonus Total Allowable OH	\$ \$	120,000 21,176 141,176
Overhead Rate	14	41.18%
Allowable Bonus Total Allowable OH	\$ \$	21,176 * 141,176

^{*15} percent of Total Allowable OH.

Example 2

Direct Labor Base OH Pool, Excluding Bonus Actual Bonus Paid, not in OH Pool Amount		500,000 700,000 100,000
B=Allowable Bonus Amount		
B=.15[(Overhead Pool 700,000) + Allow. Bonus] B=105,000+.15B B15B=105,000 .85B=105,000 B=\$123,527		
Potential Allowable Bonus Actual Bonus Paid	\$	123,527 100,000
Adjustment to Bonus	\$	0 *
Overhead Pool, Excluding Bonus Allowable Bonus Total Allowable OH		700,000 100,000 800,000
Overhead Rate	1	60.00%
Allowable Bonus	\$	100,000 **

Total Allowable OH

\$ 800,000

^{*}If actual bonus < potential allowable bonus, the actual bonus amount is accepted. **12.5 percent of Total Allowable OH.

Example 3

Direct Labor Base	\$1,000,000
OH Pool, Excluding Bonus	\$1,500,000
Actual Bonus Paid, not in OH Pool Amount	\$ 300,000

B=Allowable Bonus Amount

 $B=.15[(Overhead\ Pool\ 1,500,000) + Allow.\ Bonus]$

B=225,000+.15B B-.15B=225,000 .85B=225,000 B=\$264,706

Actual Bonus Paid \$ 300,000 Allowable Bonus 264,706 Adjustment to Bonus \$ (35,294)

Overhead Pool, Excluding Bonus \$1,500,000 Allowable Bonus 264,706 Total Allowable OH \$1,764,706

Overhead Rate 176.47%

Allowable Bonus \$ 264,706 * Total Allowable OH \$1,764,706

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^{*15} percent of Total Allowable OH.

Chapter 26

FARs Subpart 31 — Contract Cost Principles and Procedures

Chapter 26

FARs Subpart 31 — Contract Cost Principles and Procedures

We have included the following excerpt from FARs 48 CFR 31 — Contract Cost Principles and Procedures.

This part is the primary WSDOT source for determining the allowability, allocability, and reasonableness of costs billed by the consultant.

As with any laws, rules, and regulations, they are subject to change at any given time. Please contact the Audit Office, External Audit Branch, in Olympia, if you have any questions regarding this subpart.

We highly recommend that a firm purchase a set of 48 CFRs from their local federal government book store or get it from the Internet.

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PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

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31.002	Availability of accounting guide.	31.205-16	Gains and losses on disposition or impairment of depreciable property or other capital assets.
	Subpart 31.1—Applicability	21 205 17	Idle facilities and idle capacity costs.
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31.103	Contracts with commercial organizations.		
31.104	Contracts with educational institutions.		Interest and other financial costs.
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31.106	Facilities contracts.		Lobbying and political activity costs.
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	allocability.		Manufacturing and production engineering costs
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31.108	Contracts with nonprofit organizations.	31.205-29	Plant protection costs.
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54	Organizations	31.205-34	Recruitment costs.
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	Determining allowability.	31,205-37	Royalties and other costs for use of patents.
	Determining reasonableness.		Selling costs.
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	Accounting for unallowable costs.	31.205-41	
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Sub	part 31.6—Contracts with State, Local, and	Organizations			
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31.601	Governments Purpose.	31.702	General.		
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31.000 Scope of part.

This part contains cost principles and procedures for—

- (a) The pricing of contracts, subcontracts, and modifications to contracts and subcontracts whenever cost analysis is performed (see 15.404-1(c)); and
- (b) The determination, negotiation, or allowance of costs when required by a contract clause.

31.001 Definitions.

As used in this part—

"Accrued benefit cost method" means an actuarial cost method under which units of benefits are assigned to each cost accounting period and are valued as they accrue; *i.e.*, based on the services performed by each employee in the period involved. The measure of normal cost under this method for each cost accounting period is the present value of the units of benefit deemed to be credited to employees for service in that period. The measure of the actuarial accrued liability at a plan's inception date is the present value of the units of benefit credited to employees for service prior to that date. (This method is also known as the unit credit cost method without salary projection.).

"Accumulating costs" means collecting cost data in an organized manner, such as through a system of accounts.

"Actual cash value" means the cost of replacing damaged property with other property of like kind and quality in the physical condition of the property immediately before the damage.

"Actual costs" means (except for Subpart 31.6) amounts determined on the basis of costs incurred, as distinguished from forecasted costs. Actual costs include standard costs properly adjusted for applicable variances.

"Actuarial accrued liability" means pension cost attributable, under the actuarial cost method in use, to years prior to the current period considered by a particular actuarial valuation. As of such date, the actuarial accrued liability represents the excess of the present value of future benefits and administrative expenses over the present value of future normal costs for all plan participants and beneficiaries. The excess of the actuarial accrued liability over the actuarial value of the assets of a pension plan is the unfunded actuarial liability. The excess of the actuarial value of the assets of a pension plan over the actuarial accrued liability is an actuarial surplus and is treated as a negative unfunded actuarial liability.

"Actuarial assumption" means an estimate of future conditions affecting pension cost; e.g., mortality rate, employee turnover, compensation levels, earnings on pension plan assets, and changes in values of pension plan assets.

"Actuarial cost method" means a technique which uses actuarial assumptions to measure the present value of future pension benefits and pension plan administrative expenses, and that assigns the cost of such benefits and expenses to cost accounting periods. The actuarial cost method includes the asset valuation method used to determine the actuarial value of the assets of a pension plan.

"Actuarial gain and loss" means the effect on pension cost resulting from differences between actuarial assumptions and actual experience.

"Actuarial valuation" means the determination, as of a specified date, of the normal cost, actuarial accrued liability, actuarial value of the assets of a pension plan, and other relevant values for the pension plan.

"Allocate" means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

"Compensated personal absence" means any absence from work for reasons such as illness, vacation, holidays, jury duty, military training, or personal activities for which an employer pays compensation directly to an employee in accordance with a plan or custom of the employer.

"Cost input" means the cost, except general and administrative (G&A) expenses, which for contract costing purposes is allocable to the production of goods and services during a cost accounting period.

"Cost objective" means (except for Subpart 31.6) a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

"Cost of capital committed to facilities" means an imputed cost determined by applying a cost of money rate to facilities capital.

"Deferred compensation" means an award made by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of the receipt of compensation by the employee. This definition shall not include the amount of year end accruals for salaries, wages, or bonuses that are to be paid within a reasonable period of time after the end of a cost accounting period.

"Defined-benefit pension plan" means a pension plan in which the benefits to be paid, or the basis for determining such benefits, are established in advance and the contributions are intended to provide the stated benefits.

"Defined-contribution pension plan" means a pension plan in which the contributions to be made are established in advance and the benefits are determined thereby.

"Directly associated cost" means any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred.

"Estimating costs" means the process of forecasting a future result in terms of cost, based upon information available at the time. "Expressly unallowable cost" means a particular item or type of cost which, under the express provisions of an applicable law, regulation, or contract, is specifically named and stated to be unallowable.

"Facilities capital" means the net book value of tangible capital assets and of those intangible capital assets that are subject to amortization.

"Final cost objective" means (except for Subparts 31.3 and 31.6) a cost objective that has allocated to it both direct and indirect costs and, in the contractor's accumulation system, is one of the final accumulation points.

"Fiscal year" means the accounting period for which annual financial statements are regularly prepared, generally a period of 12 months, 52 weeks, or 53 weeks.

"Funded pension cost" means the portion of pension cost for a current or prior cost accounting period that has been paid to a funding agency.

"Home office" means an office responsible for directing or managing two or more, but not necessarily all, segments of an organization. It typically establishes policy for, and provides guidance to, the segments in their operations. It usually performs management, supervisory, or administrative functions, and may also perform service functions in support of the operations of the various segments. An organization which has intermediate levels, such as groups, may have several home offices which report to a common home office. An intermediate organization may be both a segment and a home office.

"Immediate-gain actuarial cost method" means any of the several actuarial cost methods under which actuarial gains and losses are included as part of the unfunded actuarial liability of the pension plan, rather than as part of the normal cost of the plan.

"Independent research and development (IR&D) cost" means the cost of effort which is neither sponsored by a grant, nor required in performing a contract, and which falls within any of the following four areas—

- (a) Basic research,
- (b) Applied research,
- (c) Development, and
- (d) Systems and other concept formulation studies.

"Indirect cost pools" means (except for Subparts 31.3 and 31.6) groupings of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

"Insurance administration expenses" means the contractor's costs of administering an insurance program; e.g., the costs of operating an insurance or risk-management department, processing claims, actuarial fees, and service fees paid to insurance companies, trustees, or technical consultants.

"Intangible capital asset" means an asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession

beyond the current accounting period for the benefits it vields.

"Job" means a homogeneous cluster of work tasks, the completion of which serves an enduring purpose for the organization. Taken as a whole, the collection of tasks, duties, and responsibilities constitutes the assignment for one or more individuals whose work is of the same nature and is performed at the same skill/responsibility level—as opposed to a position, which is a collection of tasks assigned to a specific individual. Within a job, there may be pay categories which are dependent on the degree of supervision required by the employee while performing assigned tasks which are performed by all persons with the same job.

"Job class of employees" means employees performing in positions within the same job.

"Labor cost at standard" means a preestablished measure of the labor element of cost, computed by multiplying laborrate standard by labor-time standard.

"Labor market" means a place where individuals exchange their labor for compensation. Labor markets are identified and defined by a combination of the following factors—

- (1) Geography,
- (2) Education and/or technical background required,
- (3) Experience required by the job,
- (4) Licensing or certification requirements,
- (5) Occupational membership, and
- (6) Industry.

"Labor-rate standard" means a preestablished measure, expressed in monetary terms, of the price of labor.

"Labor-time standard" means a preestablished measure, expressed in temporal terms, of the quantity of labor.

"Material cost at standard" means a preestablished measure of the material elements of cost, computed by multiplying material-price standard by material-quantity standard.

"Material-price standard" means a preestablished measure, expressed in monetary terms, of the price of material.

"Material-quantity standard" means a preestablished measure, expressed in physical terms, of the quantity of material.

"Moving average cost" means an inventory costing method under which an average unit cost is computed after each acquisition by adding the cost of the newly acquired units to the cost of the units of inventory on hand and dividing this figure by the new total number of units.

"Nonqualified pension plan" means any pension plan other than a qualified pension plan as defined in this part.

"Normal cost" means the annual cost attributable, under the actuarial cost method in use, to current and future years as of a particular valuation date excluding any payment in respect of an unfunded actuarial liability.

"Original complement of low cost equipment" means a group of items acquired for the initial outfitting of a tangible

capital asset or an operational unit, or a new addition to either. The items in the group individually cost less than the minimum amount established by the contractor for capitalization for the classes of assets acquired but in the aggregate they represent a material investment. The group, as a complement, is expected to be held for continued service beyond the current period. Initial outfitting of the unit is completed when the unit is ready and available for normal operations.

"Pay-as-you-go cost method" means a method of recognizing pension cost only when benefits are paid to retired employees or their beneficiaries.

"Pension plan" means a deferred compensation plan established and maintained by one or more employers to provide systematically for the payment of benefits to plan participants after their retirements, provided that the benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability and death payments, and survivorship payments to beneficiaries of deceased employees, may be an integral part of a pension plan.

"Pension plan participant" means any employee or former employee of an employer or any member or former member of an employee organization, who is or may become eligible to receive a benefit from a pension plan which covers employees of such employer or members of such organization who have satisfied the plan's participation requirements, or whose beneficiaries are receiving or may be eligible to receive any such benefit. A participant whose employment status with the employer has not been terminated is an active participant of the employer's pension plan.

"Profit center" means (except for Subparts 31.3 and 31.6) the smallest organizationally independent segment of a company charged by management with profit and loss responsibilities.

"Projected benefit cost method" means either-

- (1) Any of the several actuarial cost methods that distribute the estimated total cost of all of the employees' prospective benefits over a period of years, usually their working careers; or
- (2) A modification of the accrued benefit cost method that considers projected compensation levels.

"Proposal" means any offer or other submission used as a basis for pricing a contract, contract modification, or termination settlement or for securing payments thereunder.

"Qualified pension plan" means a pension plan comprising a definite written program communicated to and for the exclusive benefit of employees that meets the criteria deemed essential by the Internal Revenue Service as set forth in the Internal Revenue Code for preferential tax treatment regarding contributions, investments, and distributions. Any other plan is a nonqualified pension plan.

"Self-insurance charge" means a cost which represents the projected average loss under a self-insurance plan. "Service life" means the period of usefulness of a tangible capital asset (or group of assets) to its current owner. The period may be expressed in units of time or output. The estimated service life of a tangible capital asset (or group of assets) is a current forecast of its service life and is the period over which depreciation cost is to be assigned.

"Spread-gain actuarial cost method" means any of the several projected benefit actuarial cost methods under which actuarial gains and losses are included as part of the current and future normal costs of the pension plan.

"Standard cost" means any cost computed with the use of preestablished measures.

"Tangible capital asset" means an asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the services it yields.

"Termination of employment gain or loss" means an actuarial gain or loss resulting from the difference between the assumed and actual rates at which pension plan participants separate from employment for reasons other than retirement, disability, or death.

"Variance" means the difference between a preestablished measure and an actual measure.

"Weighted average cost" means an inventory costing method under which an average unit cost is computed periodically by dividing the sum of the cost of beginning inventory plus the cost of acquisitions by the total number of units included in these two categories.

31.002 Availability of accounting guide.

Contractors needing assistance in developing or improving their accounting systems and procedures may request a copy of the guide entitled "Information for Contractors" (DCAAP 7641.90). The guide is available from—

Headquarters, Defense Contract Audit Agency Operating Administrative Office 8725 John J Kingman Road, Suite 2135 Fort Belvoir, VA 22060-6219 Telephone No. (703) 767-1066 Telefax No. (703) 767-1061.

Subpart 31.1—Applicability

31.100 Scope of subpart.

This subpart describes the applicability of the cost principles and procedures in succeeding subparts of this part to various types of contracts and subcontracts. It also describes the need for advance agreements.

31.101 Objectives.

In recognition of differing organizational characteristics, the cost principles and procedures in the succeeding subparts are grouped basically by organizational type; e.g., commercial concerns and educational institutions. The overall objective is to provide that, to the extent practicable, all organizations of similar types doing similar work will follow the same cost principles and procedures. To achieve this uniformity, individual deviations concerning cost principles require advance approval of the agency head or designee. Class deviations for the civilian agencies require advance approval of the Civilian Agency Acquisition Council. Class deviations for the National Aeronautics and Space Administration require advance approval of the Associate Administrator for Procurement. Class deviations for the Department of Defense require advance approval of the Director of Defense Procurement, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

31.102 Fixed-price contracts.

The applicable subparts of Part 31 shall be used in the pricing of fixed-price contracts, subcontracts, and modifications to contracts and subcontracts whenever (a) cost analysis is performed, or (b) a fixed-price contract clause requires the determination or negotiation of costs. However, application of cost principles to fixed-price contracts and subcontracts shall not be construed as a requirement to negotiate agreements on individual elements of cost in arriving at agreement on the total price. The final price accepted by the parties reflects agreement only on the total price. Further, notwithstanding the mandatory use of cost principles, the objective will continue to be to negotiate prices that are fair and reasonable, cost and other factors considered.

31.103 Contracts with commercial organizations.

This category includes all contracts and contract modifications for supplies, services, or experimental, developmental, or research work negotiated with organizations other than educational institutions (see 31.104), construction and architect-engineer contracts (see 31.105), State and local governments (see 31.107) and nonprofit organizations (see 31.108) on the basis of cost.

- (a) The cost principles and procedures in Subpart 31.2 and agency supplements shall be used in pricing negotiated supply, service, experimental, developmental, and research contracts and contract modifications with commercial organizations whenever cost analysis is performed as required by 15.404-1(c).
- (b) In addition, the contracting officer shall incorporate the cost principles and procedures in Subpart 31.2 and agency supplements by reference in contracts with commercial organizations as the basis for—
 - (1) Determining reimbursable costs under-
- (i) Cost-reimbursement contracts and cost-reimbursement subcontracts under these contracts performed by commercial organizations and

- (ii) The cost-reimbursement portion of time-andmaterials contracts except when material is priced on a basis other than at cost (see 16.601(b)(3));
 - (2) Negotiating indirect cost rates (see Subpart 42.7);
- (3) Proposing, negotiating, or determining costs under terminated contracts (see 49.103 and 49.113);
- (4) Price revision of fixed-price incentive contracts (see 16.204 and 16.403);
- (5) Price redetermination of price redetermination contracts (see 16.205 and 16.206); and
 - (6) Pricing changes and other contract modifications.

31.104 Contracts with educational institutions.

This category includes all contracts and contract modifications for research and development, training, and other work performed by educational institutions.

- (a) The contracting officer shall incorporate the cost principles and procedures in Subpart 31.3 by reference in cost-reimbursement contracts with educational institutions as the basis for—
- Determining reimbursable costs under the contracts and cost-reimbursement subcontracts thereunder performed by educational institutions;
 - (2) Negotiating indirect cost rates; and
- (3) Settling costs of cost-reimbursement terminated contracts (see Subpart 49.3 and 49.109-7).
- (b) The cost principles in this subpart are to be used as a guide in evaluating costs in connection with negotiating fixed-price contracts and termination settlements.

31.105 Construction and architect-engineer contracts.

- (a) This category includes all contracts and contract modifications negotiated on the basis of cost with organizations other than educational institutions (see 31.104), State and local governments (see 31.107), and nonprofit organizations except those exempted under OMB Circular A-122 (see 31.108) for construction management or construction, alteration or repair of buildings, bridges, roads, or other kinds of real property. It also includes architect-engineer contracts related to construction projects. It does not include contracts for vessels, aircraft, or other kinds of personal property.
- (b) Except as otherwise provided in (d) of this section, the cost principles and procedures in Subpart 31.2 shall be used in the pricing of contracts and contract modifications in this category if cost analysis is performed as required by 15.404-1(c).
- (c) In addition, the contracting officer shall incorporate the cost principles and procedures in Subpart 31.2 (as modified by (d) of this section by reference in contracts in this category as the basis for—
- (1) Determining reimbursable costs under cost-reimbursement contracts, including cost-reimbursement subcontracts thereunder;

- (2) Negotiating indirect cost rates;
- (3) Proposing, negotiating, or determining costs under terminated contracts;
- (4) Price revision of fixed-price incentive contracts;and
 - (5) Pricing changes and other contract modifications.
- (d) Except as otherwise provided in this paragraph (d), the allowability of costs for construction and architect-engineer contracts shall be determined in accordance with Subpart 31.2.
- (1) Because of widely varying factors such as the nature, size, duration, and location of the construction project, advance agreements as set forth in 31.109, for such items as home office overhead, partners' compensation, employment of consultants, and equipment usage costs, are particularly important in construction and architect-engineer contracts. When appropriate, they serve to express the parties' understanding and avoid possible subsequent disputes or disallowances.
- (2) "Construction equipment," as used in this section, means equipment (including marine equipment) in sound workable condition, either owned or controlled by the contractor or the subcontractor at any tier, or obtained from a commercial rental source, and furnished for use under Government contracts.
- (i) Allowable ownership and operating costs shall be determined as follows:
- (A) Actual cost data shall be used when such data can be determined for both ownership and operations costs for each piece of equipment, or groups of similar serial or series equipment, from the contractor's accounting records. When such costs cannot be so determined, the contracting agency may specify the use of a particular schedule of predetermined rates or any part thereof to determine ownership and operating costs of construction equipment (see subdivisions (d)(2)(i)(B) and (C) of this section). However, costs otherwise unallowable under this part shall not become allowable through the use of any schedule (see 31.109(c)). For example, schedules need to be adjusted for Government contract costing purposes if they are based on replacement cost, include unallowable interest costs, or use improper cost of money rates or computations. Contracting officers should review the computations and factors included within the specified schedule and ensure that unallowable or unacceptably computed factors are not allowed in cost submissions.
- (B) Predetermined schedules of construction equipment use rates (e.g., the Construction Equipment Ownership and Operating Expense Schedule, published by the U.S. Army Corps of Engineers, industry sponsored construction equipment cost guides, or commercially published schedules of construction equipment use cost) provide average ownership and operating rates for construction equipment. The allowance for operating costs may include costs

- for such items as fuel, filters, oil, and grease; servicing, repairs, and maintenance; and tire wear and repair. Costs of labor, mobilization, demobilization, overhead, and profit are generally not reflected in schedules, and separate consideration may be necessary.
- (C) When a schedule of predetermined use rates for construction equipment is used to determine direct costs, all costs of equipment that are included in the cost allowances provided by the schedule shall be identified and eliminated from the contractor's other direct and indirect costs charged to the contract. If the contractor's accounting system provides for site or home office overhead allocations, all costs which are included in the equipment allowances may need to be included in any cost input base before computing the contractor's overhead rate. In periods of suspension of work pursuant to a contract clause, the allowance for equipment ownership shall not exceed an amount for standby cost as determined by the schedule or contract provision.
- (ii) Reasonable costs of renting construction equipment are allowable (but see paragraph (C) of this subsection).
- (A) Costs, such as maintenance and minor or running repairs incident to operating such rented equipment, that are not included in the rental rate are allowable.
- (B) Costs incident to major repair and overhaul of rental equipment are unallowable.
- (C) The allowability of charges for construction equipment rented from any division, subsidiary, or organization under common control, will be determined in accordance with 31.205-36(b)(3).
- (3) Costs incurred at the job site incident to performing the work, such as the cost of superintendence, timekeeping and clerical work, engineering, utility costs, supplies, material handling, restoration and cleanup, etc., are allowable as direct or indirect costs, provided the accounting practice used is in accordance with the contractor's established and consistently followed cost accounting practices for all work.
- (4) Rental and any other costs, less any applicable credits incurred in acquiring the temporary use of land, structures, and facilities are allowable. Costs, less any applicable credits, incurred in constructing or fabricating structures and facilities of a temporary nature are allowable.

31.106 Facilities contracts.

31.106-1 Applicable cost principles.

The cost principles and procedures applicable to the evaluation and determination of costs under facilities contracts (as defined in 45.301), and subcontracts thereunder, will be governed by the type of entity to which a facilities contract is awarded. Except as otherwise provided in 31.106-2 of this section, Subpart 31.2 applies to facilities contracts awarded to commercial organizations; Subpart 31.3 applies to facili-

ties contracts awarded to educational institutions; and 31.105 applies to facilities contracts awarded to construction contractors. Whichever cost principles are appropriate will be used in the pricing of facilities contracts and contract modifications if cost analysis is performed as required by 15.404-1(c). In addition, the contracting officer shall incorporate the cost principles and procedures appropriate in the circumstances (e.g., Subpart 31.2; Subpart 31.3; or 31.105) by reference in facilities contracts as the basis for—

- (a) Determining reimbursable costs under facilities contracts, including cost-reimbursement subcontracts thereunder;
 - (b) Negotiating indirect cost rates; and
- (c) Determining costs of terminated contracts when the contractor elects to "voucher out" costs (see Subpart 49.3), and for settlement by determination (see 49.109-7).

31.106-2 Exceptions to general rules on allowability and allocability.

- (a) A contractor's established accounting system and procedures are normally directed to the equitable allocation of costs to the types of products which the contractor produces or services rendered in the course of normal operating activities. The acquisition of, or work on, facilities for the Government normally does not involve the manufacturing processes, plant departmental operations, cost patterns of work, administrative and managerial control, or clerical effort usual to production of the contractor's normal products or services.
- (b) Advance agreements (see 31.109) should be made between the contractor and the contracting officer as to indirect cost items to be applied to the facilities acquisition. A contractor's normal accounting practice for allocating indirect costs to the acquisition of contractor facilities may range from charging all these costs to this acquisition to not charging any. When necessary to produce an equitable result, the contractor's usual method of allocating indirect cost shall be varied, and appropriate adjustment shall be made to the pools of indirect cost and the bases of their distribution.
- (c) The purchase of completed facilities (or services in connection with the facilities) from outside sources does not involve the contractor's direct labor or indirect plant maintenance personnel. Accordingly, indirect manufacturing and plant overhead costs, which are primarily incurred or generated by reason of direct labor or maintenance labor operations, are not allocable to the acquisition of such facilities.
- (d) Contracts providing for the installation of new facilities or the rehabilitation of existing facilities may involve the use of the contractor's plant maintenance labor, as distinguished from direct labor engaged in the production of the company's normal products. In such instances, only those types of indirect manufacturing and plant operating costs

that are related to or incurred by reason of the expenditures of the classes of labor used for the performance of the facilities work may be allocated to the facilities contract. Thus, a facilities contract which involves the use of plant maintenance labor only would not be subject to an allocation of such cost items as direct productive labor supervision, depreciation, and maintenance expense applicable to productive machinery and equipment, or raw material and finished goods storage costs.

(e) Where a facilities contract calls for the construction, production, or rehabilitation of equipment or other items that are involved in the regular course of the contractor's business by the use of the contractor's direct labor and manufacturing processes, the indirect costs normally allocated to all that work may be allocated to the facilities contract.

31.106-3 Contractor's commercial items.

If facilities constituting the contractor's usual commercial items (or only minor modifications thereof) are acquired by the Government under the contract, the Government shall not pay any amount in excess of the contractor's most favored customer price or the price of other suppliers for like quantities of the same or substantially the same items, whichever is lower.

31.107 Contracts with State, local, and federally recognized Indian tribal governments.

- (a) Subpart 31.6 provides principles and standards for determining costs applicable to contracts with State, local, and federally recognized Indian tribal governments. They provide the basis for a uniform approach to the problem of determining costs and to promote efficiency and better relationships between State, local, and federally recognized Indian tribal governments, and Federal Government entities. They apply to all programs that involve contracts with State, local, and federally recognized Indian tribal governments, except contracts with—
- (1) Publicly financed educational institutions subject to Subpart 31.3; or
- (2) Publicly owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Government agencies.
- (b) The Office of Management and Budget will approve any other exceptions in particular cases when adequate justification is presented.

31.108 Contracts with nonprofit organizations.

Subpart 31.7 provides principles and standards for determining costs applicable to contracts with nonprofit organizations other than educational institutions, State and local governments, and those nonprofit organizations exempted under OMB Circular No. A-122.

31.109 Advance agreements.

- (a) The extent of allowability of the costs covered in this part applies broadly to many accounting systems in varying contract situations. Thus, the reasonableness, the allocability and the allowability under the specific cost principles at Subparts 31.2, 31.3, 31.6, and 31.7 of certain costs may be difficult to determine. To avoid possible subsequent disallowance or dispute based on unreasonableness, unallocability or unallowability under the specific cost principles at Subparts 31.2, 31.3, 31.6, and 31.7, contracting officers and contractors should seek advance agreement on the treatment of special or unusual costs. However, an advance agreement is not an absolute requirement and the absence of an advance agreement on any cost will not, in itself, affect the reasonableness, allocability or the allowability under the specific cost principles at Subparts 31.2, 31.3, 31.6, and 31.7 of that cost.
- (b) Advance agreements may be negotiated either before or during a contract but should be negotiated before incurrence of the costs involved. The agreements must be in writing, executed by both contracting parties, and incorporated into applicable current and future contracts. An advance agreement shall contain a statement of its applicability and duration.
- (c) The contracting officer is not authorized by this 31.109 to agree to a treatment of costs inconsistent with this part. For example, an advance agreement may not provide that, notwithstanding 31.205-20, interest is allowable.
- (d) Advance agreements may be negotiated with a particular contractor for a single contract, a group of contracts, or all the contracts of a contracting office, an agency, or several agencies.
- (e) The cognizant administrative contracting officer (ACO), or other contracting officer established in Part 42, shall negotiate advance agreements except that an advance agreement affecting only one contract, or class of contracts from a single contracting office, shall be negotiated by a contracting officer in the contracting office, or an ACO when delegated by the contracting officer. When the negotiation authority is delegated, the ACO shall coordinate the proposed agreement with the contracting officer before executing the advance agreement.
- (f) Before negotiating an advance agreement, the Government negotiator shall—
- (1) Determine if other contracting offices inside the agency or in other agencies have a significant unliquidated dollar balance in contracts with the same contractor;
- (2) Inform any such office or agency of the matters under consideration for negotiation; and
- (3) As appropriate, invite the office or agency and the responsible audit agency to participate in prenegotiation discussions and/or in the subsequent negotiations.

- (g) Upon completion of the negotiation, the sponsor shall prepare and distribute to other interested agencies and offices, including the audit agency, copies of the executed agreement and a memorandum providing the information specified in 15.406-3, as applicable.
- (h) Examples of costs for which advance agreements may be particularly important are—
- (1) Compensation for personal services, including but not limited to allowances for off-site pay, incentive pay, location allowances, hardship pay, cost of living differential, and termination of defined benefit pension plans;
 - (2) Use charges for fully depreciated assets;
 - (3) Deferred maintenance costs;
 - (4) Precontract costs;
- (5) Independent research and development and bid and proposal costs;
 - (6) Royalties and other costs for use of patents;
 - (7) Selling and distribution costs;
- (8) Travel and relocation costs, as related to special or mass personnel movements, as related to travel via contractor-owned, -leased, or -chartered aircraft; or as related to maximum per diem rates;
 - (9) Costs of idle facilities and idle capacity;
- (10) Severance pay to employees on support service contracts;
 - (11) Plant reconversion;
- (12) Professional services (e.g., legal, accounting, and engineering);
- (13) General and administrative costs (e.g., corporate, division, or branch allocations) attributable to the general management, supervision, and conduct of the contractor's business as a whole. These costs are particularly significant in construction, job-site, architect-engineer, facilities, and Government-owned contractor operated (GOCO) plant contracts (see 31.203(f));
- (14) Costs of construction plant and equipment (see 31.105(d));
 - (15) Costs of public relations and advertising; and
 - (16) Training and education costs (see 31.205-44(h)).

31.110 Indirect cost rate certification and penalties on unallowable costs.

- (a) Certain contracts require certification of the indirect cost rates proposed for final payment purposes. See 42.703-2 for administrative procedures regarding the certification provisions and the related contract clause prescription.
- (b) If unallowable costs are included in final indirect cost settlement proposals, penalties may be assessed. See 42.709 for administrative procedures regarding the penalty assessment provisions and the related contract clause prescription.

Subpart 31.2—Contracts with Commercial Organizations

31.201 General.

31.201-1 Composition of total cost.

- (a) The total cost of a contract is the sum of the direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits, plus any allocable cost of money pursuant to 31.205-10. In ascertaining what constitutes a cost, any generally accepted method of determining or estimating costs that is equitable and is consistently applied may be used, including standard costs properly adjusted for applicable variances. See 31.201-2(b) and (c) for Cost Accounting Standards (CAS) requirements.
- (b) While the total cost of a contract includes all costs properly allocable to the contract, the allowable costs to the Government are limited to those allocable costs which are allowable pursuant to Part 31 and applicable agency supplements.

31.201-2 Determining allowability.

- (a) The factors to be considered in determining whether a cost is allowable include the following:
 - (1) Reasonableness.
 - (2) Allocability.
- (3) Standards promulgated by the CAS Board, if applicable; otherwise, generally accepted accounting principles and practices appropriate to the particular circumstances.
 - (4) Terms of the contract.
 - (5) Any limitations set forth in this subpart.
- (b) Certain cost principles in this subpart incorporate the measurement, assignment, and allocability rules of selected CAS and limit the allowability of costs to the amounts determined using the criteria in those selected standards. Only those CAS or portions of standards specifically made applicable by the cost principles in this subpart are mandatory unless the contract is CAS-covered (see Part 30). Business units that are not otherwise subject to these standards under a CAS clause are subject to the selected standards only for the purpose of determining allowability of costs on Government contracts. Including the selected standards in the cost principles does not subject the business unit to any other CAS rules and regulations. The applicability of the CAS rules and regulations is determined by the CAS clause, if any, in the contract and the requirements of the standards themselves.
- (c) When contractor accounting practices are inconsistent with this Subpart 31.2, costs resulting from such inconsistent practices shall not be allowed in excess of the amount that would have resulted from using practices consistent with this subpart.
- (d) A contractor is responsible for accounting for costs appropriately and for maintaining records, including sup-

porting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with applicable cost principles in this subpart and agency supplements. The contracting officer may disallow all or part of a claimed cost which is inadequately supported.

31.201-3 Determining reasonableness.

- (a) A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. Reasonableness of specific costs must be examined with particular care in connection with firms or their separate divisions that may not be subject to effective competitive restraints. No presumption of reasonableness shall be attached to the incurrence of costs by a contractor. If an initial review of the facts results in a challenge of a specific cost by the contracting officer or the contracting officer's representative, the burden of proof shall be upon the contractor to establish that such cost is reasonable.
- (b) What is reasonable depends upon a variety of considerations and circumstances, including—
- (1) Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;
- (2) Generally accepted sound business practices, arm's-length bargaining, and Federal and State laws and regulations;
- (3) The contractor's responsibilities to the Government, other customers, the owners of the business, employees, and the public at large; and
- (4) Any significant deviations from the contractor's established practices.

31.201-4 Determining allocability.

A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it—

- (a) Is incurred specifically for the contract;
- (b) Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or
- (c) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

31.201-5 Credits.

The applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost and received by or accruing to the contractor shall be credited to the Government either as a cost reduction or by cash refund. See 31.205-6(i)(4) for rules governing refund or credit to the

Government associated with pension adjustments and asset reversions.

31.201-6 Accounting for unallowable costs.

- (a) Costs that are expressly unallowable or mutually agreed to be unallowable, including mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract. A directly associated cost is any cost which is generated solely as a result of incurring another cost, and which would not have been incurred had the other cost not been incurred. When an unallowable cost is incurred, its directly associated costs are also unallowable.
- (b) Costs which specifically become designated as unallowable or as unallowable directly associated costs of unallowable costs as a result of a written decision furnished by a contracting officer shall be identified if included in or used in computing any billing, claim, or proposal applicable to a Government contract. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this paragraph or paragraph (a) of this subsection.
- (c) The practices for accounting for and presentation of unallowable costs will be those as described in 48 CFR 9904.405, Accounting for Unallowable Costs.
- (d) If a directly associated cost is included in a cost pool which is allocated over a base that includes the unallowable cost with which it is associated, the directly associated cost shall remain in the cost pool. Since the unallowable costs will attract their allocable share of costs from the cost pool, no further action is required to assure disallowance of the directly associated costs. In all other cases, the directly associated costs, if material in amount, must be purged from the cost pool as unallowable costs.
- (e)(1) In determining the materiality of a directly associated cost, consideration should be given to the significance of—
 - (i) The actual dollar amount,
- (ii) The cumulative effect of all directly associated costs in a cost pool, or
- (iii) The ultimate effect on the cost of Government contracts.
- (2) Salary expenses of employees who participate in activities that generate unallowable costs shall be treated as directly associated costs to the extent of the time spent on the proscribed activity, provided the costs are material in accordance with paragraph (e)(1) of this subsection (except when such salary expenses are, themselves, unallowable). The time spent in proscribed activities should be compared to total time spent on company activities to determine if the costs are material. Time spent by employees outside the normal working hours should not be considered except when it

is evident that an employee engages so frequently in company activities during periods outside normal working hours as to indicate that such activities are a part of the employee's regular duties.

(3) When a selected item of cost under 31.205 provides that directly associated costs be unallowable, it is intended that such directly associated costs be unallowable only if determined to be material in amount in accordance with the criteria provided in paragraphs (e)(1) and (e)(2) of this section, except in those situations where allowance of any of the directly associated costs involved would be considered to be contrary to public policy.

31.201-7 Construction and architect-engineer contracts.

Specific principles and procedures for evaluating and determining costs in connection with contracts and subcontracts for construction, and architect-engineer contracts related to construction projects, are in 31.105. The applicability of these principles and procedures is set forth in 31.000 and 31.100.

31.202 Direct costs.

- (a) A direct cost is any cost that can be identified specifically with a particular final cost objective. No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective. Costs identified specifically with the contract are direct costs of the contract and are to be charged directly to the contract. All costs specifically identified with other final cost objectives of the contractor are direct costs of those cost objectives and are not to be charged to the contract directly or indirectly.
- (b) For reasons of practicality, any direct cost of minor dollar amount may be treated as an indirect cost if the accounting treatment—
- Is consistently applied to all final cost objectives;
 and
- (2) Produces substantially the same results as treating the cost as a direct cost.

31.203 Indirect costs.

(a) An indirect cost is any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or an intermediate cost objective. It is not subject to treatment as a direct cost. After direct costs have been determined and charged directly to the contract or other work, indirect costs are those remaining to be allocated to the several cost objectives. An indirect cost shall not be allocated to a final cost objective if other costs incurred for the same purpose in like circumstances have been included as a direct cost of that or any other final cost objective.

- (b) Indirect costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring such costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the several cost objectives. Commonly, manufacturing overhead, selling expenses, and general and administrative (G&A) expenses are separately grouped. Similarly, the particular case may require subdivision of these groupings, e.g., building occupancy costs might be separable from those of personnel administration within the manufacturing overhead group. This necessitates selecting a distribution base common to all cost objectives to which the grouping is to be allocated. The base should be selected so as to permit allocation of the grouping on the basis of the benefits accruing to the several cost objectives. When substantially the same results can be achieved through less precise methods, the number and composition of cost groupings should be governed by practical considerations and should not unduly complicate the allocation.
- (c) Once an appropriate base for distributing indirect costs has been accepted, it shall not be fragmented by removing individual elements. All items properly includable in an indirect cost base should bear a pro rata share of indirect costs irrespective of their acceptance as Government contract costs. For example, when a cost input base is used for the distribution of G&A costs, all items that would properly be part of the cost input base, whether allowable or unallowable, shall be included in the base and bear their pro rata share of G&A costs.
- (d) The contractor's method of allocating indirect costs shall be in accordance with standards promulgated by the CAS Board, if applicable to the contract; otherwise, the method shall be in accordance with generally accepted accounting principles which are consistently applied. The method may require examination when—
- (1) Substantial differences occur between the cost patterns of work under the contract and the contractor's other work:
- (2) Significant changes occur in the nature of the business, the extent of subcontracting, fixed-asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances; or
- (3) Indirect cost groupings developed for a contractor's primary location are applied to offsite locations. Separate cost groupings for costs allocable to offsite locations may be necessary to permit equitable distribution of costs on the basis of the benefits accruing to the several cost objectives
- (e) A base period for allocating indirect costs is the cost accounting period during which such costs are incurred and accumulated for distribution to work performed in that period. The criteria and guidance in 30.406 for selecting the

- cost accounting periods to be used in allocating indirect costs are incorporated herein for application to contracts subject to full CAS coverage. For contracts subject to modified CAS coverage and for non-CAS-covered contracts, the base period for allocating indirect costs will normally be the contractor's fiscal year. But a shorter period may be appropriate (1) for contracts in which performance involves only a minor portion of the fiscal year, or (2) when it is general practice in the industry to use a shorter period. When a contract is performed over an extended period, as many base periods shall be used as are required to represent the period of contract performance.
- (f) Special care should be exercised in applying the principles of paragraphs (b), (c), and (d) of this section when Government-owned contractor-operated (GOCO) plants are involved. The distribution of corporate, division, or branch office G&A expenses to such plants operating with little or no dependence on corporate administrative activities may require more precise cost groupings, detailed accounts screening, and carefully developed distribution bases.

31.204 Application of principles and procedures.

- (a) Costs shall be allowed to the extent they are reasonable, allocable, and determined to be allowable under 31.201, 31.202, 31.203, and 31.205. These criteria apply to all of the selected items that follow, even if particular guidance is provided for certain items for emphasis or clarity.
- (b) Costs incurred as reimbursements or payments to a subcontractor under a cost-reimbursement, fixed-price incentive, or price redeterminable type subcontract of any tier above the first firm-fixed-price subcontract or fixed-price subcontract with economic price adjustment provisions are allowable to the extent that allowance is consistent with the appropriate subpart of this Part 31 applicable to the subcontract involved. Costs incurred as payments under firm-fixed-price subcontracts or fixed-price subcontracts with economic price adjustment provisions or modifications thereto, when cost analysis was performed under 15.404-1(c), shall be allowable only to the extent that the price was negotiated in accordance with 31.102.
- (c) Section 31.205 does not cover every element of cost. Failure to include any item of cost does not imply that it is either allowable or unallowable. The determination of allowability shall be based on the principles and standards in this subpart and the treatment of similar or related selected items. When more than one subsection in 31.205 is relevant to a contractor cost, the cost shall be apportioned among the applicable subsections, and the determination of allowability of each portion shall be based on the guidance contained in the applicable subsection. When a cost, to which more than one subsection in 31.205 is relevant, cannot be apportioned, the determination of allowability shall be based on the guidance contained in the subsection that most specifically deals

with, or best captures the essential nature of, the cost at issue.

31.205 Selected costs.

31.205-1 Public relations and advertising costs.

- (a) "Public relations" means all functions and activities dedicated to-
- (1) Maintaining, protecting, and enhancing the image of a concern or its products; or
- (2) Maintaining or promoting reciprocal understanding and favorable relations with the public at large, or any segment of the public. The term public relations includes activities associated with areas such as advertising, customer relations, etc.
- (b) "Advertising" means the use of media to promote the sale of products or services and to accomplish the activities referred to in paragraph (d) of this subsection, regardless of the medium employed, when the advertiser has control over the form and content of what will appear, the media in which it will appear, and when it will appear. Advertising media include but are not limited to conventions, exhibits, free goods, samples, magazines, newspapers, trade papers, direct mail, dealer cards, window displays, outdoor advertising, radio, and television.
- (c) Public relations and advertising costs include the costs of media time and space, purchased services performed by outside organizations, as well as the applicable portion of salaries, travel, and fringe benefits of employees engaged in the functions and activities identified in paragraphs (a) and (b) of this subsection.
- (d) The only allowable advertising costs are those that are—
- (1) Specifically required by contract, or that arise from requirements of Government contracts, and that are exclusively for—
- (i) Acquiring scarce items for contract performance; or
- (ii) Disposing of scrap or surplus materials acquired for contract performance;
- (2) Costs of activities to promote sales of products normally sold to the U.S. Government, including trade shows, which contain a significant effort to promote exports from the United States. Such costs are allowable, notwithstanding paragraphs (f)(1), (f)(3), (f)(4)(ii), and (f)(5) of this subsection. However, such costs do not include the costs of memorabilia (e.g., models, gifts, and souvenirs), alcoholic beverages, entertainment, and physical facilities that are used primarily for entertainment rather than product promotion; or
 - (3) Allowable in accordance with 31.205-34.
- (e) Allowable public relations costs include the following:

- (1) Costs specifically required by contract.
- (2) Costs of-
- (i) Responding to inquiries on company policies and activities;
- (ii) Communicating with the public, press, stock-holders, creditors, and customers; and
- (iii) Conducting general liaison with news media and Government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern such as notice of contract awards, plant closings or openings, employee layoffs or rehires, financial information, etc.
- (3) Costs of participation in community service activities (e.g., blood bank drives, charity drives, savings bond drives, disaster assistance, etc.).
- (4) Costs of plant tours and open houses (but see paragraph (f)(5) of this subsection).
- (5) Costs of keel laying, ship launching, commissioning, and roll-out ceremonies, to the extent specifically provided for by contract.
- (f) Unallowable public relations and advertising costs include the following:
- (1) All public relations and advertising costs, other than those specified in paragraphs (d) and (e) of this subsection, whose primary purpose is to promote the sale of products or services by stimulating interest in a product or product line (except for those costs made allowable under 31.205-38(c)), or by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company's products or services.
- (2) All costs of trade shows and other special events which do not contain a significant effort to promote the export sales of products normally sold to the U.S. Government.
- (3) Costs of sponsoring meetings, conventions, symposia, seminars, and other special events when the principal purpose of the event is other than dissemination of technical information or stimulation of production.
 - (4) Costs of ceremonies such as-
 - (i) Corporate celebrations and
 - (ii) New product announcements.
- (5) Costs of promotional material, motion pictures, videotapes, brochures, handouts, magazines, and other media that are designed to call favorable attention to the contractor and its activities.
- (6) Costs of souvenirs, models, imprinted clothing, buttons, and other mementos provided to customers or the public.
- (7) Costs of memberships in civic and community organizations.

31.205-2 [Reserved]

31.205-3 Bad debts.

Bad debts, including actual or estimated losses arising from uncollectible accounts receivable due from customers and other claims, and any directly associated costs such as collection costs, and legal costs are unallowable.

31.205-4 Bonding costs.

- (a) Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the contractor. They arise also in instances where the contractor requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.
- (b) Costs of bonding required pursuant to the terms of the contract are allowable.
- (c) Costs of bonding required by the contractor in the general conduct of its business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

31.205-5 [Reserved]

31.205-6 Compensation for personal services.

- (a) General. Compensation for personal services includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor during the period of contract performance (except as otherwise provided for in other paragraphs of this subsection). It includes, but is not limited to, salaries; wages; directors' and executive committee members' fees: bonuses (including stock bonuses); incentive awards; employee stock options, and stock appreciation rights; employee stock ownership plans; employee insurance: fringe benefits; contributions to pension, other postretirement benefits, annuity, and employee incentive compensation plans: and allowances for off-site pay, incentive pay, location allowances, hardship pay, severance pay, and cost of living differential. Compensation for personal services is allowable subject to the following general criteria and additional requirements contained in other parts of this cost principle:
- (1) Compensation for personal services must be for work performed by the employee in the current year and must not represent a retroactive adjustment of prior years' salaries or wages (but see 31.205-6(g), (h), (j), (k), (m), and (o) of this subsection).
- (2) The compensation in total must be reasonable for the work performed; however, specific restrictions on individual compensation elements must be observed where they are prescribed.

- (3) The compensation must be based upon and conform to the terms and conditions of the contractor's established compensation plan or practice followed so consistently as to imply, in effect, an agreement to make the payment.
- (4) No presumption of allowability will exist where the contractor introduces major revisions of existing compensation plans or new plans and the contractor—
- (i) Has not notified the cognizant ACO of the changes either before their implementation or within a reasonable period after their implementation, and
- (ii) Has not provided the Government, either before implementation or within a reasonable period after it, an opportunity to review the allowability of the changes.
- (5) Costs that are unallowable under other paragraphs of this Subpart 31.2 shall not be allowable under this subsection 31.205-6 solely on the basis that they constitute compensation for personal services.
- (b) Reasonableness. The compensation for personal services paid or accrued to each employee must be reasonable for the work performed. Compensation will be considered reasonable if each of the allowable elements making up the employee's compensation package is reasonable. This paragraph addresses the reasonableness of compensation, except when the compensation is set by provisions of a labor-management agreement under terms of the Federal Labor Relations Act or similar state statutes. The tests for reasonableness of labor-management agreements are set forth in paragraph (c) of this subsection. In addition to the provisions of 31.201-3, in testing the reasonableness of individual elements for particular employees or job classes of employees, consideration should be given to factors determined to be relevant by the contracting officer.
- (1) Among others, factors which may be relevant include general conformity with the compensation practices of other firms of the same size, the compensation practices of other firms in the same industry, the compensation practices of firms in the same geographic area, the compensation practices of firms engaged in predominantly non-Government work, and the cost of comparable services obtainable from outside sources. The appropriate factors for evaluating the reasonableness of compensation depend on the degree to which those factors are representative of the labor market for the job being evaluated. The relative significance of factors will vary according to circumstances. In administering this principle, it is recognized that not every compensation case need be subjected in detail to the tests described in this cost principle. The tests need be applied only when a general review reveals amounts or types of compensation that appear unreasonable or unjustified. Based on an initial review of the facts, contracting officers or their representatives may challenge the reasonableness of any individual element or the sum of the individual elements of compensation paid or

accrued to particular employees or job classes of employees. In such cases, there is no presumption of reasonableness and, upon challenge, the contractor must demonstrate the reasonableness of the compensation item in question. In doing so, the contractor may introduce, and the contracting officer will consider, not only any circumstances surrounding the compensation item challenged, but also the magnitude of other compensation elements which may be lower than would be considered reasonable in themselves. However, the contractor's right to introduce offsetting compensation elements into consideration is subject to the following limitations:

- (i) Offsets will be considered only between the allowable elements of an employee's (or a job class of employees') compensation package or between the compensation packages of employees in jobs within the same job grade or level.
- (ii) Offsets will be considered only between the allowable portion of the following compensation elements of employees or job classes of employees:
 - (A) Wages and salaries.
 - (B) Incentive bonuses.
 - (C) Deferred compensation.
 - (D) Pension and savings plan benefits.
 - (E) Health insurance benefits.
 - (F) Life insurance benefits.
 - (G) Compensated personal absence benefits.

However, any of the above elements or portions thereof, whose amount is not measurable, shall not be introduced or considered as an offset item.

- (iii) In considering offsets, the magnitude of the compensation elements in question must be taken into account. In determining the magnitude of compensation elements, the timing of receipt by the employee must be considered.
- (2) Compensation costs under certain conditions give rise to the need for special consideration. Among such conditions are the following:
- (i) Compensation to (A) owners of closely held corporations, partners, sole proprietors, or members of their immediate families, or (B) persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise. Determination should be made that salaries are reasonable for the personal services rendered rather than being a distribution of profits. Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits. For closely held corporations, compensation costs covered by this subdivision shall not be recognized in amounts exceeding those costs that are deductible as compensation under the Internal Revenue Code and regulations under it.

- (ii) Any change in a contractor's compensation policy that results in a substantial increase in the contractor's level of compensation, particularly when it was concurrent with an increase in the ratio of Government contracts to other business, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy. Contracting officers or their representatives should normally challenge increased costs where major revisions of existing compensation plans or new plans are introduced by the contractor, and the contractor—
- (A) Has not notified the cognizant ACO of the changes either before their implementation or within a reasonable period after their implementation; and
- (B) Has not provided the Government, either before implementation or within a reasonable period after it, an opportunity to review the reasonableness of the changes.
- (iii) The contractor's business is such that its compensation levels are not subject to the restraints that normally occur in the conduct of competitive business.
- (iv) The contractor incurs costs for compensation in excess of the amounts which are deductible under the Internal Revenue Code and regulations issued under it.
- (c) Labor-management agreements. If costs of compensation established under "arm's length" negotiated labormanagement agreements are otherwise allowable, the costs are reasonable if, as applied to work in performing Government contracts, they are not determined to be unwarranted by the character and circumstances of the work or discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (e.g. work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (e.g., work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in employee compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances. Disallowance of costs will not be made under this paragraph (c) unless-
- (1) The contractor has been permitted an opportunity to justify the costs; and
- (2) Due consideration has been given to whether unusual conditions pertain to Government contract work, imposing burdens, hardships, or hazards on the contractor's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

- (d) Form of payment. (1) Compensation for personal services includes compensation paid or to be paid in the future to employees in the form of cash, corporate securities, such as stocks, bonds, and other financial instruments (see paragraph (d)(2) of this subsection regarding valuation), or other assets, products, or services.
- (2) When compensation is paid with securities of the contractor or of an affiliate, the following additional restrictions apply:
- (i) Valuation placed on the securities shall be the fair market value on the measurement date (i.e., the first date the number of shares awarded is known) determined upon the most objective basis available.
- (ii) Accruals for the cost of securities before issuing the securities to the employees shall be subject to adjustment according to the possibilities that the employees will not receive the securities and that their interest in the accruals will be forfeited.
- (e) Domestic and foreign differential pay. (1) When personal services are performed in a foreign country, compensation may also include a differential that may properly consider all expenses associated with foreign employment such as housing, cost of living adjustments, transportation, bonuses, additional Federal, State, local or foreign income taxes resulting from foreign assignment, and other related expenses.
- (2) Differential allowances for additional Federal, State, or local income taxes resulting from domestic assignments are unallowable.
- (f) Bonuses and incentive compensation. (1) Incentive compensation for management employees, cash bonuses, suggestion awards, safety awards, and incentive compensation based on production, cost reduction, or efficient performance are allowable provided the awards are paid or accrued under an agreement entered into in good faith between the contractor and the employees before the services are rendered or pursuant to an established plan or policy followed by the contractor so consistently as to imply, in effect, an agreement to make such payment and the basis for the award is supported.
- (2) When the bonus and incentive compensation payments are deferred, the costs are subject to the requirements of paragraph (f)(1) of this subsection and of paragraph (k) of this subsection.
- (g) Severance pay. (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages by contractors to workers whose employment is being involuntarily terminated. Payments for early retirement incentive plans are covered in paragraph (j)(7).

- (2) Severance pay to be allowable must meet the general allowability criteria in subdivision (g)(2)(i) of this subsection, and, depending upon whether the severance is normal or abnormal, criteria in subdivision (g)(2)(ii) for normal severance pay or subdivision (g)(2)(iii) for abnormal severance pay also apply. In addition, paragraph (g)(3) of this subsection applies if the severance cost is for foreign nationals employed outside the United States.
- (i) Severance pay is allowable only to the extent that, in each case, it is required by (A) law; (B) employer-employee agreement; (C) established policy that constitutes, in effect, an implied agreement on the contractor's part; or (D) circumstances of the particular employment. Payments made in the event of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment, or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor are not severance pay and are unallowable.
- (ii) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant, or where the contractor provides for accrual of pay for normal severances, that method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period and if amounts accrued are allocated to all work performed in the contractor's plant.
- (iii) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis.
- (3) Norwithstanding the reference to geographical area in 31.205-6(b)(1), under 10 U.S.C. 2324(e)(1)(M) and 41 U.S.C. 256(e)(1)(M), the costs of severance payments to foreign nationals employed under a service contract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States. Further, under 10 U.S.C. 2324(e)(1)(N) and 41 U.S.C. 256(e)(1)(N), all such costs of severance payments which are otherwise allowable are unallowable if the termination of employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States facility in that country at the request of the government of that country; this does not apply if the closing of a facility or curtailment of activities is made pursuant to a status-of-forces or other country-to-country agreement entered into with the government of that country before November 29, 1989. 10 U.S.C. 2324(e)(3) and 41 U.S.C.

- 256(e)(2) permit the head of the agency, or designee, to waive these cost allowability limitations under certain circumstances (see 37.113 and the solicitation provision at 52.237-8).
- (h) Backpay. (1) Backpay resulting from violations of Federal labor laws or the Civil Rights Act of 1964. Backpay may result from a negotiated settlement, order, or court decree that resolves a violation of Federal labor laws or the Civil Rights Act of 1964. Such backpay falls into two categories: one requiring the contractor to pay employees additional compensation for work performed for which they were underpaid, and the other resulting from other violations, such as when the employee was improperly discharged, discriminated against, or other circumstances for which the backpay was not additional compensation for work performed. Backpay resulting from underpaid work is compensation for the work performed and is allowable. All other backpay resulting from violation of Federal labor laws or the Civil Rights Act of 1964 is unallowable.
- (2) Other backpay. Backpay may also result from payments to employees (union and nonunion) for the difference in their past and current wage rates for working without a contract or labor agreement during labor management negotiations. Such backpay is allowable. Backpay to nonunion employees based upon results of union agreement negotiations is allowable only if—
- (i) A formal agreement or understanding exists between management and the employees concerning these payments, or
- (ii) An established policy or practice exists and is followed by the contractor so consistently as to imply, in effect, an agreement to make such payment.
- (i) Compensation based on changes in the prices of corporate securities or corporate security ownership, such as stock options, stock appreciation rights, phantom stock plans, and junior stock conversions.
- Any compensation which is calculated, or valued, based on changes in the price of corporate securities is unallowable.
- (2) Any compensation represented by dividend payments or which is calculated based on dividend payments is unallowable.
- (3) If a contractor pays an employee in lieu of the employee receiving or exercising a right, option, or benefit which would have been unallowable under this paragraph (i), such payments are also unallowable.
- (j) Pension costs. (1) A pension plan, as defined in 31.001, is a deferred compensation plan. Additional benefits such as permanent and total disability and death payments and survivorship payments to beneficiaries of deceased employees may be treated as pension costs, provided the benefits are an integral part of the pension plan and meet all the criteria pertaining to pension costs.

- (2) Pension plans are normally segregated into two types of plans: defined-benefit or defined-contribution pension plans. The cost of all defined-benefit pension plans shall be measured, allocated, and accounted for in compliance with the provisions of 48 CFR 9904.412, Cost accounting standard for composition and measurement of pension cost, and 48 CFR 9904.413, Adjustment and allocation of pension cost. The costs of all defined-contribution pension plans shall be measured, allocated, and accounted for in accordance with the provisions of 48 CFR 9904.412 and 48 CFR 9904.413. Pension costs are allowable subject to the referenced standards and the cost limitations and exclusions set forth in paragraph (j)(2)(i) and in paragraphs (j)(3) through (8) of this subsection.
- (i) Except for nonqualified pension plans using the pay-as-you-go cost method, to be allowable in the current year, pension costs must be funded by the time set for filing of the Federal income tax return or any extension thereof. Pension costs assigned to the current year, but not funded by the tax return time, shall not be allowable in any subsequent year. For nonqualified pension plans using the pay-as-you-go cost method, to be allowable in the current year, pension costs must be allocable in accordance with 48 CFR 9904.412-50(d)(3).
- (ii) Pension payments must be reasonable in amount and must be paid pursuant to an agreement entered into in good faith between the contractor and employees before the work or services are performed; and the terms and conditions of the established plan. The cost of changes in pension plans that are discriminatory to the Government or are not intended to be applied consistently for all employees under similar circumstances in the future are not allowable.
- (iii) Except as provided for early retirement benefits in paragraph (j)(7) of this subsection, one-time-only pension supplements not available to all participants of the basic plan are not allowable as pension costs unless the supplemental benefits represent a separate pension plan and the benefits are payable for life at the option of the employee.
- (iv) Increases in payments to previously retired plan participants covering cost-of-living adjustments are allowable if paid in accordance with a policy or practice consistently followed.
- (3) Defined-benefit pension plans. This paragraph covers pension plans in which the benefits to be paid or the basis for determining such benefits are established in advance and the contributions are intended to provide the stated benefits. The cost limitations and exclusions pertaining to defined-benefit plans are as follows:
- (i) (A) Except for nonqualified pension plans, pension costs (see 48 CFR 9904.412-40(a)(1)) assigned to the current accounting period, but not funded during it, shall not be allowable in subsequent years (except that a payment made to a fund by the time set for filing the Federal income

tax return or any extension thereof is considered to have been made during such taxable year). However, any portion of pension cost computed for a cost accounting period, that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of the Employee's Retirement Income Security Act of 1974 (ERISA), will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412-50(c)(5)).

- (B) For nonqualified pension plans, except those using the pay-as-you-go cost method, allowable costs are limited to the amount allocable in accordance with 48 CFR 9904.412-50(d)(2).
- (C) For nonqualified pension plans using the pay-as-you-go cost method, allowable costs are limited to the amounts allocable in accordance with 48 CFR 9904.412-50(d)(3).
- (ii) Any amount funded in excess of the pension cost assigned to a cost accounting period is not allowable and shall be accounted for as set forth at 48 CFR 9904.412-50(a)(4), and shall be allowable in the future period to which it is assigned, to the extent it is allocable, reasonable, and not otherwise unallowable.
- (iii) Increased pension costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable. If a composite rate is used for allocating pension costs between the segments of a company and if, because of differences in the timing of the funding by the segments, an inequity exists, allowable pension costs for each segment will be limited to that particular segment's calculation of pension costs as provided for in 48 CFR 9904.413-50(c). Determinations of unallowable costs shall be made in accordance with the actuarial cost method used in calculating pension costs.
- (iv) Allowability of the cost of indemnifying the Pension Benefit Guaranty Corporation (PBGC) under ERISA Section 4062 or 4064 arising from terminating an employee deferred compensation plan will be considered on a case-by-case basis, provided that if insurance was required by the PBGC under ERISA Section 4023, it was so obtained and the indemnification payment is not recoverable under the insurance. Consideration under the foregoing circumstances will be primarily for the purpose of appraising the extent to which the indemnification payment is allocable to Government work. If a beneficial or other equitable relationship exists, the Government will participate, despite the requirements of 31.205-19(a)(3) and (b), in the indemnification payment to the extent of its fair share.
- (v) Increased pension costs resulting from the withdrawal of assets from a pension fund and transfer to another employee benefit plan fund, or transfer of assets to another account within the same fund, are unallowable except to the extent authorized by an advance agreement. If the with-

- drawal of assets from a pension fund is a plan termination under ERISA, the provisions of paragraph (j)(4) of this subsection apply. The advance agreement shall—
- (A) State the amount of the Government's equitable share in the gross amount withdrawn or transferred; and
- (B) Provide that the Government receive a credit equal to the amount of the Government's equitable share of the gross withdrawal or transfer.
- (4) Pension adjustments and asset reversions. (i) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) for contracts and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Subpart 31.2 or for which cost or pricing data were submitted.
- (ii) For all other situations where assets revert to the contractor, or such assets are constructively received by it for any reason, the contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to Subpart 31.2. Excise taxes on pension plan asset reversions or withdrawals under this paragraph (j)(4)(ii) are unallowable in accordance with 31.205-41(b)(6).
- (5) Defined-contribution pension plans. This paragraph covers those pension plans in which the contributions are established in advance and the level of benefits is determined by the contributions made. It also covers profit sharing, savings plans, and other such plans, provided the plans fall within the definition of a pension plan in paragraph (j)(1) of this subsection.
- (i) Allowable pension cost is limited to the net contribution required to be made for a cost accounting period after taking into account dividends and other credits, where applicable. However, any portion of pension cost computed for a cost accounting period that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of ERISA will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412-50(c)(5)).
- (ii) The provisions of paragraphs (j)(3)(ii) and (iv) of this subsection apply to defined-contribution plans.

- (6) Pension plans using the pay-as-you-go cost method. The cost of pension plans using the pay-as-you-go cost method shall be measured, allocated, and accounted for in accordance with 48 CFR 9904.412 and 9904.413. Pension costs for a pension plan using the pay-as-you-go cost method shall be allowable to the extent they are allocable, reasonable, and not otherwise unallowable.
- (7) Early retirement incentive plans. An early retirement incentive plan is a plan under which employees receive a bonus or incentive, over and above the requirement of the basic pension plan, to retire early. These plans normally are not applicable to all participants of the basic plan and do not represent life income settlements, and as such would not qualify as pension costs. However, for contract costing purposes, early retirement incentive payments are allow-able subject to the pension cost criteria contained in subdivisions (j)(3)(i) through (iv) provided—
- (i) The costs are accounted for and allocated in accordance with the contractor's system of accounting for pension costs;
- (ii) The payments are made in accordance with the terms and conditions of the contractor's plan;
- (iii) The plan is applied only to active employees. The cost of extending the plan to employees who retired or were terminated before the adoption of the plan is unallowable; and
- (iv) The total of the incentive payments to any employee may not exceed the amount of the employee's annual salary for the previous fiscal year before the employee's retirement.
- (8) Employee stock ownership plans (ESOP). (i) An ESOP is an individual stock bonus plan designed specifically to invest in the stock of the employer corporation. The contractor's contributions to an Employee Stock Ownership Trust (ESOT) may be in the form of cash, stock, or property. Costs of ESOP's are allowable subject to the following conditions:
- (A) Contributions by the contractor in any one year may not exceed 15 percent (25 percent when a money purchase plan is included) of salaries and wages of employees participating in the plan in any particular year.
- (B) The contribution rate (ratio of contribution to salaries and wages of participating employees) may not exceed the last approved contribution rate except when approved by the contracting officer based upon justification provided by the contractor. When no contribution was made in the previous year for an existing ESOP, or when a new ESOP is first established, and the contractor proposes to make a contribution in the current year, the contribution rate shall be subject to the contracting officer's approval.
- (C) When a plan or agreement exists wherein the liability for the contribution can be compelled for a specific

- year, the expense associated with that liability is assignable only to that period. Any portion of the contribution not funded by the time set for filing of the Federal income tax return for that year or any extension thereof shall not be allowable in subsequent years.
- (D) When a plan or agreement exists wherein the liability for the contribution cannot be compelled, the amount contributed for any year is assignable to that year provided the amount is funded by the time set for filing of the Federal income tax return for that year.
- (E) When the contribution is in the form of stock, the value of the stock contribution shall be limited to the fair market value of the stock on the date that title is effectively transferred to the trust. Cash contributions shall be allowable only when the contractor furnishes evidence satisfactory to the contracting officer demonstrating that stock purchases by the ESOT are or will be at a fair market price; e.g., makes arrangements with the trust permitting the contracting officer to examine purchases of stock by the trust to determine that prices paid are at fair market value. When excessive prices are paid, the amount of the excess will be credited to the same indirect cost pools that were charged for the ESOP contributions in the year in which the stock purchase occurs. However, when the trust purchases the stock with borrowed funds which will be repaid over a period of years by cash contributions from the contractor to the trust, the excess price over fair market value shall be credited to the indirect cost pools pro rata over the period of years during which the contractor contributes the cash used by the trust to repay the loan. When the fair market value of unissued stock or stock of a closely held corporation is not readily determinable, the valuation will be made on a caseby-case basis taking into consideration the guidelines for valuation used by the IRS.
- (ii) Amounts contributed to an ESOP arising from either—
- (A) An additional investment tax credit (see 1975 Tax Reduction Act—TRASOP's); or
- (B) A payroll-based tax credit (see Economic Recovery Tax Act of 1981) are unallowable.
- (iii) The requirements of subdivision (j)(3)(ii) of this subsection are applicable to Employee Stock Ownership Plans.
- (k) Deferred compensation other than pensions.

 (1) Deferred compensation is an award given by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of receipt of compensation by the employee. Deferred compensation does not include the amount of year-end accruals for salaries, wages, or bonuses that are paid within a reasonable period of time after the end of a cost accounting period. Subject to

- 31.205-6(a), deferred awards are allowable when they are based on current or future services. Awards made in periods subsequent to the period when the work being remunerated was performed are not allowable.
- (2) The costs of deferred awards shall be measured, allocated, and accounted for in compliance with the provisions of 48 CFR 9904.415, Accounting for the Cost of Deferred Compensation.
- (3) Deferred compensation payments to employees under awards made before the effective date of 48 CFR 9904.415 are allowable to the extent they would have been allowable under prior acquisition regulations.
- (1) Compensation incidental to business acquisitions. The following costs are unallowable: (1) Payments to employees under agreements in which they receive special compensation, in excess of the contractor's normal severance pay practice, if their employment terminates following a change in the management control over, or ownership of, the contractor or a substantial portion of its assets.
- (2) Payments to employees under plans introduced in connection with a change (whether actual or prospective) in the management control over, or ownership of, the contractor or a substantial portion of its assets in which those employees receive special compensation, which is contingent upon the employee remaining with the contractor for a specified period of time.
- (m) Fringe benefits. (1) Fringe benefits are allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries. Fringe benefits include, but are not limited to, the cost of vacations, sick leave, holidays, military leave, employee insurance, and supplemental unemployment benefit plans. Except as provided otherwise in Subpart 31.2, the costs of fringe benefits are allowable to the extent that they are reasonable and are required by law, employer-employee agreement, or an established policy of the contractor.
- (2) That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees (see 31.205-46(f)).
- (n) Employee rebate and purchase discount plans. Rebates and purchase discounts, in whatever form, granted to employees on products or services produced by the contractor or affiliates are unallowable.
 - (o) Postretirement benefits other than pensions (PRB).
- (1) PRB covers all benefits, other than cash benefits and life insurance benefits paid by pension plans, provided to employees, their beneficiaries, and covered dependents during the period following the employees' retirement. Benefits

- encompassed include, but are not limited to, postretirement health care; life insurance provided outside a pension plan; and other welfare benefits such as tuition assistance, day care, legal services, and housing subsidies provided after retirement.
- (2) To be allowable, PRB costs must be reasonable and incurred pursuant to law, employer-employee agreement, or an established policy of the contractor. In addition, to be allowable, PRB costs must also be calculated in accordance with paragraphs (o)(2)(i), (ii), or (iii) of this section.
- (i) Cash basis. Cost recognized as benefits when they are actually provided, must be paid to an insurer, provider, or other recipient for current year benefits or premiums.
- (ii) Terminal funding. If a contractor elects a terminal-funded plan, it does not accrue PRB costs during the working lives of employees. Instead, it accrues and pays the entire PRB liability to an insurer or trustee in a lump sum upon the termination of employees (or upon conversion to such a terminal-funded plan) to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The lump sum is allowable if amortized over a period of 15 years.
- (iii) Accrual basis. Accrual costing other than terminal funding must be measured and assigned according to Generally Accepted Accounting Principles and be paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The accrual must also be calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board.
- (3) To be allowable, costs must be funded by the time set for filing the Federal income tax return or any extension thereof. PRB costs assigned to the current year, but not funded or otherwise liquidated by the tax return time, shall not be allowable in any subsequent year.
- (4) Increased PRB costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable.
- (5) Costs of postretirement benefits in subdivision (o)(2)(iii) of this subsection attributable to past service ("transition obligation") as defined in Financial Accounting Standards Board Statement 106, paragraph 110, are allowable subject to the following limitation: The allowable amount of such costs assignable to a contractor fiscal year cannot exceed the amount of such costs which would be assigned to that contractor fiscal year under the delayed recognition methodology described in paragraphs 112 and 113 of Statement 106.

- (6) The Government shall receive an equitable share of any amount of previously funded PRB costs which revert or inure to the contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which cost or pricing data were required or which were subject to Subpart 31.2.
- (p) Limitation on allowability of compensation for certain contractor personnel. (1) Costs incurred after January 1. 1998, for compensation of a senior executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy (OFPP), under Section 39 of the OFPP Act (41 U.S.C. 435) are unallowable (10 U.S.C. 2324(e)(1)(P) and 41 U.S.C. 256(e)(1)(P)). This limitation is the sole statutory limitation on allowable senior executive compensation costs incurred after January 1, 1998, under new or previously existing contracts. This limitation applies whether or not the affected contracts were previously subject to a statutory limitation on such costs. (Note that pursuant to Section 804 of Pub. L. 105-261, the definition of "senior executive" in (p)(2)(ii) has been changed for compensation costs incurred after January 1, 1999.)

(2) As used in this paragraph:

- (i) "Compensation" means the total amount of wages, salary, bonuses, deferred compensation (see paragraph (k) of this subsection), and employer contributions to defined contribution pension plans (see paragraphs (j)(5) and (j)(8) of this subsection), for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in the contractor's cost accounting records for the fiscal year.
 - (ii) "Senior executive" means-
 - (A) Prior to January 2, 1999-
- (1) The Chief Executive Officer (CEO) or any individual acting in a similar capacity at the contractor's headquarters;
- (2) The four most highly compensated employees in management positions at the contractor's head-quarters, other than the CEO; and
- (3) If the contractor has intermediate home offices or segments that report directly to the contractor's headquarters, the five most highly compensated employees in management positions at each such intermediate home office or segment.
- (B) Effective January 2, 1999, the five most highly compensated employees in management positions at each home office and each segment of the contractor, whether or not the home office or segment reports directly to the contractor's headquarters.
- (iii) "Fiscal year" means the fiscal year established by the contractor for accounting purposes.
- (iv) "Contractor's headquarters" means the highest organizational level from which executive compensation costs are allocated to Government contracts.

31.205-7 Contingencies.

- (a) "Contingency," as used in this subpart, means a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at the present time.
- (b) Costs for contingencies are generally unallowable for historical costing purposes because such costing deals with costs incurred and recorded on the contractor's books. However, in some cases, as for example, terminations, a contingency factor may be recognized when it is applicable to a past period to give recognition to minor unsertled factors in the interest of expediting settlement.
- (c) In connection with estimates of future costs, contingencies fall into two categories:
- (1) Those that may arise from presently known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy; e.g., anticipated costs of rejects and defective work. Contingencies of this category are to be included in the estimates of future costs so as to provide the best estimate of performance cost.
- (2) Those that may arise from presently known or unknown conditions, the effect of which cannot be measured so precisely as to provide equitable results to the contractor and to the Government; e.g., results of pending litigation. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately (including the basis upon which the contingency is computed) to facilitate the negotiation of appropriate contractual coverage. (See, for example, 31.205-6(g), 31.205-19, and 31.205-24.)

31.205-8 Contributions or donations.

Contributions or donations, including cash, property and services, regardless of recipient, are unallowable, except as provided in 31.205-1(e)(3).

31.205-9 [Reserved]

31.205-10 Cost of money.

- (a) Facilities capital cost of money—(1) General. (i) Facilities capital cost of money (cost of capital committed to facilities) is an imputed cost determined by applying a cost-of-money rate to facilities capital employed in contract performance. A cost-of-money rate is uniformly imputed to all contractors (see subdivision (a)(1)(ii) of this subsection). Capital employed is determined without regard to whether its source is equity or borrowed capital. The resulting cost of money is not a form of interest on borrowings (see 31.205-20).
- (ii) 48 CFR 9904.414, Cost of Money as an Element of the Cost of Facilities Capital, establishes criteria for measuring and allocating, as an element of contract cost, the cost of capital committed to facilities. Cost-of-money factors

are developed on Form CASB-CMF, broken down by overhead pool at the business unit, using—

- (A) Business-unit facilities capital data,
- (B) Overhead allocation base data, and
- (C) The cost-of-money rate, which is based on interest rates specified by the Secretary of the Treasury under Public Law 92-41.
- (2) Allowability. Whether or not the contract is otherwise subject to CAS, facilities capital cost of money is allowable if—
- (i) The contractor's capital investment is measured, allocated to contracts, and costed in accordance with 48 CFR 9904.414;
- (ii) The contractor maintains adequate records to demonstrate compliance with this standard;
- (iii) The estimated facilities capital cost of money is specifically identified or proposed in cost proposals relating to the contract under which this cost is to be claimed; and
- (iv) The requirements of 31.205-52, which limit the allowability of facilities capital cost of money, are observed.
- (3) Accounting. The facilities capital cost of money need not be entered on the contractor's books of account. However, the contractor shall—
 - (i) Make a memorandum entry of the cost, and
- (ii) Maintain, in a manner that permits audit and verification, all relevant schedules, cost data, and other data necessary to support the entry fully.
 - (4) Payment. Facilities capital cost of money that is—
 (i) Allowable under paragraph (2) of this subsec-
- (i) Allowable under paragraph (2) of this subsection; and
- (ii) Calculated, allocated, and documented in accordance with this cost principle shall be an "incurred cost" for reimbursement purposes under applicable cost-reimbursement contracts and for progress payment purposes under fixed-price contracts.
- (5) The requirements of 31.205-52 shall be observed in determining the allowable cost of money attributable to including asset valuations resulting from business combinations in the facilities capital employed base.
- (b) Cost of money as an element of the cost of capital assets under construction—(1) General. (i) Cost of money as an element of the cost of capital assets under construction is an imputed cost determined by applying a cost-of-money rate to the investment in tangible and intangible capital assets while they are being constructed, fabricated, or developed for a contractor's own use. Capital employed is determined without regard to whether its source is equity or borrowed capital. The resulting cost of money is not a form of interest on borrowing (see 31.205-20).
- (ii) 48 CFR 9904.417, Cost of Money as an Element of the Cost of Capital Assets Under Construction, establishes criteria for measuring and allocating, as an ele-

- ment of contract cost, the cost of capital committed to capital assets under construction, fabrication, or development.
- (2) Allowability. (i) Whether or not the contract is otherwise subject to CAS, and except as specified in subdivision (ii) of this section, the cost of money for capital assets under construction, fabrication, or development is allowable if—
- (A) The cost of money is calculated, allocated to contracts, and costed in accordance with 48 CFR 9904.417,
- (B) The contractor maintains adequate records to demonstrate compliance with this standard;
- (C) The cost of money for tangible capital assets is included in the capitalized cost that provides the basis for allowable depreciation costs, or, in the case of intangible capital assets, the cost of money is included in the cost of those assets for which amortization costs are allowable; and
- (D) The requirements of 31.205-52, which limit the allowability of cost of money for capital assets under construction, fabrication, or development, are observed.
- (ii) Actual interest cost in lieu of the calculated imputed cost of money for capital assets under construction, fabrication, or development is unallowable.
- (3) Accounting. The cost of money for capital assets under construction need not be entered on the contractor's books of account. However, the contractor shall (i) make a memorandum entry of the cost and (ii) maintain, in a manner that permits audit and verification, all relevant schedules, cost data, and other data necessary to support the entry fully.
- (4) Payment. The cost of money for capital assets under construction that is allowable under paragraph (2) of this subsection of this cost principle shall be an "incurred cost" for reimbursement purposes under applicable cost-reimbursement contracts and for progress payment purposes under fixed-price contracts.

31.205-11 Depreciation.

- (a) Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life refers to the prospective period of economic usefulness in a particular contractor's operations as distinguished from physical life; it is evidenced by the actual or estimated retirement and replacement practice of the contractor.
- (b) Contractors having contracts subject to 48 CFR 9904.409, Depreciation of Tangible Capital Assets, must adhere to the requirement of that standard for all fully CAS-covered contracts and may elect to adopt the standard for all other contracts. All requirements of 48 CFR 9904.409 are applicable if the election is made, and its requirements supersede any conflicting requirements of this cost principle. Once electing to adopt 48 CFR 9904.409 for all contracts,

contractors must continue to follow it until notification of final acceptance of all deliverable items on all open negotiated Government contracts. Paragraphs (c) through (e) of this subsection apply to contracts to which 48 CFR 9904,409 is not applied.

- (c) Normal depreciation on a contractor's plant, equipment, and other capital facilities is an allowable contract cost, if the contractor is able to demonstrate that it is reasonable and allocable (but see paragraph (i) of this section).
- (d) Depreciation shall be considered reasonable if the contractor follows policies and procedures that are—
- (1) Consistent with those followed in the same cost center for business other than Government;
- (2) Reflected in the contractor's books of accounts and financial statements; and
- (3) Both used and acceptable for Federal income tax purposes.
- (e) When the depreciation reflected on a contractor's books of accounts and financial statements differs from that used and acceptable for Federal income tax purposes, reimbursement shall be based on the asset cost amortized over the estimated useful life of the property using depreciation methods (straight line, sum of the years' digits, etc.) acceptable for income tax purposes. Allowable depreciation shall not exceed the amounts used for book and statement purposes and shall be determined in a manner consistent with the depreciation policies and procedures followed in the same cost center on non-Government business (but see paragraph (o) of this subsection).
- (f) Depreciation for reimbursement purposes in the case of tax-exempt organizations shall be determined on the basis described in paragraph (e) of this section.
- (g) Special considerations are required for assets acquired before the effective date of this cost principle if, on that date, the undepreciated balance of these assets resulting from depreciation policies and procedures used previously for Government contracts and subcontracts is different from the undepreciated balance on the books and financial statements. The undepreciated balance for contract cost purposes shall be depreciated over the remaining life using the methods and lives followed for book purposes. The aggregate depreciation of any asset allowable after the effective date of this 31.205-11 shall not exceed the cost basis of the asset less any depreciation allowed or allowable under prior acquisition regulations.
- (h) Depreciation should usually be allocated to the contract and other work as an indirect cost. The amount of depreciation allowed in any accounting period may, consistent with the basic objectives in paragraph (a) of this subsection, vary with volume of production or use of multishift operations.
- (i) In the case of emergency facilities covered by certificates of necessity, a contractor may elect to use normal

depreciation without requesting a determination of "true depreciation," or may elect to use either normal or "true depreciation" after a determination of "true depreciation" has been made by an Emergency Facilities Depreciation Board (EFDB). The method elected must be followed consistently throughout the life of the emergency facility. When an election is made to use normal depreciation, the criteria in paragraphs (c), (d), (e), and (f) of this section shall apply for both the emergency period and the post-emergency period. When an election is made to use "true depreciation", the amount allowable as depreciation—

- (1) With respect to the emergency period (five years), shall be computed in accordance with the determination of the EFDB and allocated rateably over the full five year emergency period; provided no other allowance is made which would duplicate the factors, such as extraordinary obsolescence, covered by the Board's determination; and
- (2) After the end of the emergency period, shall be computed by distributing the remaining undepreciated portion of the cost of the emergency facility over the balance of its useful life provided the remaining undepreciated portion of such cost shall not include any amount of unrecovered "true depreciation."
- (j) No depreciation, rental, or use charge shall be allowed on property acquired at no cost from the Government by the contractor or by any division, subsidiary, or affiliate of the contractor under common control.
- (k) The depreciation on any item which meets the criteria for allowance at a "price" under 31.205-26(e) may be based on that price, provided the same policies and procedures are used for costing all business of the using division, subsidiary, or organization under common control.
- (1) No depreciation or rental shall be allowed on property fully depreciated by the contractor or by any division, subsidiary, or affiliate of the contractor under common control. However, a reasonable charge for using fully depreciated property may be agreed upon and allowed (but see 31.109(h)(2)). In determining the charge, consideration shall be given to cost, total estimated useful life at the time of negotiations, effect of any increased maintenance charges or decreased efficiency due to age, and the amount of depreciation previously charged to Government contracts or subcontracts.
- (m) 48 CFR 9904.404, Capitalization of Tangible Assets, applies to assets acquired by a "capital lease" as defined in Statement of Financial Accounting Standard No. 13 (FAS-13), Accounting for Leases, issued by the Financial Accounting Standards Board (FASB). Compliance with 48 CFR 9904.404 and FAS-13 requires that such leased assets (capital leases) be treated as purchased assets; i.e., be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges, or over the leased life as amortization charges as appropriate.

Assets whose leases are classified as capital leases under FAS-13 are subject to the requirements of 31.205-11 while assets acquired under leases classified as operating leases are subject to the requirements on rental costs in 31.205-36. The standards of financial accounting and reporting prescribed by FAS-13 are incorporated into this principle and shall govern its application, except as provided in paragraphs (1), (2), and (3) of this paragraph.

- Rental costs under a sale and leaseback arrangement shall be allowable up to the amount that would have been allowed had the contractor retained title to the property.
- (2) Capital leases, as defined in FAS-13, for all real and personal property, between any related parties are subject to the requirements of this paragraph 31.205-11(m). If it is determined that the terms of the lease have been significantly affected by the fact that the lessee and lessor are related, depreciation charges shall not be allowed in excess of those which would have occurred if the lease contained terms consistent with those found in a lease between unrelated parties.
- (3) Assets acquired under leases that the contractor must capitalize under FAS-13 shall not be treated as purchased assets for contract purposes if the leases are covered by 31.205-36(b)(4).
- (n) Whether or not the contract is otherwise subject to CAS, the requirements of 31.205-52, which limit the allowability of depreciation, shall be observed.
- (o) In the event of a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances, allowable depreciation of the impaired assets shall be limited to the amounts that would have been allowed had the assets not been written down (see 31.205-16(g)). However, this does not preclude a change in depreciation resulting from other causes such as permissible changes in estimates of service life, consumption of services, or residual value.

31.205-12 Economic planning costs.

- (a) This category includes costs of generalized long-range management planning that is concerned with the future overall development of the contractor's business and that may take into account the eventual possibility of economic dislocations or fundamental alterations in those markets in which the contractor currently does business Economic planning costs do not include organization or reorganization costs covered by 31.205-27.
- (b) Economic planning costs are allowable as indirect costs to be properly allocated.
- (c) Research and development and engineering costs designed to lead to new products for sale to the general public are not allowable under this principle.

31.205-13 Employee morale, health, welfare, food service, and dormitory costs and credits.

- (a) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, except as limited by paragraphs (b), (c), and (d) of this subsection. Some examples of allowable activities are house publications, health clinics, wellness/fitness centers, employee counseling services, and food and dormitory services, which include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities.
- (b) Costs of gifts are unallowable. (Gifts do not include awards for performance made pursuant to 31.205-6(f) or awards made in recognition of employee achievements pursuant to an established contractor plan or policy.)
- (c) Costs of recreation are unallowable, except for the costs of employees' participation in company sponsored sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.
- (d) Losses from operating food and dormitory services may be included as costs only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the above objective are not allowable. A loss may be allowed, however, to the extent that the contractor can demonstrate that unusual circumstances exist (e.g., where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available; or where charged but unproductive labor costs would be excessive but for the services provided or where cessation or reduction of food or dormitory operations will not otherwise yield net cost savings) such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.
- (e) When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant, and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the service (but see paragraph (f) of this subsection).
- (f) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, may be included as costs incurred under

paragraph (a) of this subsection only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

31.205-14 Entertainment costs.

Costs of amusement, diversions, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable. Costs made specifically unallowable under this cost principle are not allowable under any other cost principle. Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.

31.205-15 Fines, penalties, and mischarging costs.

- (a) Costs of fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State, local, or foreign laws and regulations, are unallowable except when incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer.
- (b) Costs incurred in connection with, or related to, the mischarging of costs on Government contracts are unallowable when the costs are caused by, or result from, alteration or destruction of records, or other false or improper charging or recording of costs. Such costs include those incurred to measure or otherwise determine the magnitude of the improper charging, and costs incurred to remedy or correct the mischarging, such as costs to rescreen and reconstruct records.

31.205-16 Gains and losses on disposition or impairment of depreciable property or other capital assets.

- (a) Gains and losses from the sale, retirement, or other disposition (but see 31.205-19) of depreciable property shall be included in the year in which they occur as credits or charges to the cost grouping(s) in which the depreciation or amortization applicable to those assets was included (but see paragraph (d) of this subsection). However, no gain or loss shall be recognized as a result of the transfer of assets in a business combination (see 31.205-52).
- (b) Gains and losses on disposition of tangible capital assets, including those acquired under capital leases (see 31.205-11(m)), shall be considered as adjustments of depreciation costs previously recognized. The gain or loss for each asset disposed of is the difference between the net amount realized, including insurance proceeds from involuntary conversions, and its undepreciated balance. The gain recognized for contract costing purposes shall be limited to the difference between the acquisition cost (or for assets acquired under a capital lease, the value at which the leased asset is

- capitalized) of the asset and its undepreciated balance (except see subdivisions (c)(2)(i) or (ii) of this section).
- (c) Special considerations apply to an involuntary conversion which occurs when a contractor's property is destroyed by events over which the owner has no control, such as fire, windstorm, flood, accident, theft, etc., and an insurance award is recovered. The following govern involuntary conversions:
- (1) When there is a cash award and the converted asset is not replaced, gain or loss shall be recognized in the period of disposition. The gain recognized for contract costing purposes shall be limited to the difference between the acquisition cost of the asset and its undepreciated balance.
- (2) When the converted asset is replaced, the contractor shall either—
- (i) Adjust the depreciable basis of the new asset by the amount of the total realized gain or loss; or
- (ii) Recognize the gain or loss in the period of disposition, in which case the Government shall participate to the same extent as outlined in paragraph (c)(1) of this subsection.
- (d) Gains and losses on the disposition of depreciable property shall not be recognized as a separate charge or credit when—
- (1) Gains and losses are processed through the depreciation reserve account and reflected in the depreciation allowable under 31.205-11; or
- (2) The property is exchanged as part of the purchase price of a similar item, and the gain or loss is taken into consideration in the depreciation cost basis of the new item.
- (e) Gains and losses arising from mass or extraordinary sales, retirements, or other disposition other than through business combinations shall be considered on a case-by-case basis.
- (f) Gains and losses of any nature arising from the sale or exchange of capital assets other than depreciable property shall be excluded in computing contract costs.
- (g) With respect to long-lived tangible and identifiable intangible assets held for use, no loss shall be allowed for a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances (e.g., environmental damage, idle facilities arising from a declining business base, etc.). If depreciable property or other capital assets have been written down from carrying value to fair value due to impairments, gains or losses upon disposition shall be the amounts that would have been allowed had the assets not been written down.

31.205-17 Idle facilities and idle capacity costs.

As used in this subsection-

"Costs of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs; e.g., property taxes, insurance, and depreciation.

"Facilities" means plant or any portion thereof (including land integral to the operation), equipment, individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the contractor.

"Idle capacity" means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one-shift basis, less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. A multiple-shift basis may be used in the calculation instead of a one-shift basis if it can be shown that this amount of usage could normally be expected for the type of facility involved.

"Idle facilities" means completely unused facilities that are excess to the contractor's current needs.

- (1) The costs of idle facilities are unallowable unless the facilities—
- (i) Are necessary to meet fluctuations in workload;
- (ii) Were necessary when acquired and are now idle because of changes in requirements, production economies, reorganization, termination, or other causes which could not have been reasonably foreseen. (Costs of idle facilities are allowable for a reasonable period, ordinarily not to exceed 1 year, depending upon the initiative taken to use, lease, or dispose of the idle facilities (but see 31.205-42)).
- (2) Costs of idle capacity are costs of doing business and are a factor in the normal fluctuations of usage or overhead rates from period to period. Such costs are allowable provided the capacity is necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire plant or among a group of assets having substantially the same function may be idle facilities.
- (3) Any costs to be paid directly by the Government for idle facilities or idle capacity reserved for defense mobilization production shall be the subject of a separate agreement.

31.205-18 Independent research and development and bid and proposal costs.

(a) Definitions. As used in this subsection—

"Applied research" means that effort which (1) normally follows basic research, but may not be severable from the related basic research, (2) attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques, and (3) attempts to advance the state of the art. Applied research does not include efforts whose principal aim is design, development, or test of specific items or services to be considered for sale; these efforts are within the

definition of the term "development," defined in this subsection.

"Basic research" (see 2.101).

"Bid and proposal (B&P) costs" means the costs incurred in preparing, submitting, and supporting bids and proposals (whether or not solicited) on potential Government or non-Government contracts. The term does not include the costs of effort sponsored by a grant or cooperative agreement, or required in the performance of a contract.

"Company" means all divisions, subsidiaries, and affiliates of the contractor under common control.

"Development" means the systematic use, under whatever name, of scientific and technical knowledge in the design, development, test, or evaluation of a potential new product or service (or of an improvement in an existing product or service) for the purpose of meeting specific performance requirements or objectives. Development includes the functions of design engineering, prototyping, and engineering testing. Development excludes—

- Subcontracted technical effort which is for the sole purpose of developing an additional source for an existing product, or
- (2) Development effort for manufacturing or production materials, systems, processes, methods, equipment, tools, and techniques not intended for sale.

"Independent research and development (IR&D)" means a contractor's IR&D cost that consists of projects falling within the four following areas: (1) basic research, (2) applied research, (3) development, and (4) systems and other concept formulation studies. The term does not include the costs of effort sponsored by a grant or required in the performance of a contract. IR&D effort shall not include technical effort expended in developing and preparing technical data specifically to support submitting a bid or proposal.

"Systems and other concept formulation studies" means analyses and study efforts either related to specific IR&D efforts or directed toward identifying desirable new systems, equipment or components, or modifications and improvements to existing systems, equipment, or components.

- (b) Composition and allocation of costs. The requirements of 48 CFR 9904.420, Accounting for independent research and development costs and bid and proposal costs, are incorporated in their entirety and shall apply as follows—
- Fully-CAS-covered contracts. Contracts that are fully-CAS-covered shall be subject to all requirements of 48 CFR 9904.420.
- (2) Modified CAS-covered and non-CAS-covered contracts. Contracts that are not CAS-covered or that contain terms or conditions requiring modified CAS coverage shall be subject to all requirements of 48 CFR 9904.420 except 48 CFR 9904.420-50(e)(2) and 48 CFR 9904.420-50(f)(2), which are not then applicable. However, non-CAS-covered

or modified CAS-covered contracts awarded at a time the contractor has CAS-covered contracts requiring compliance with 48 CFR 9904.420, shall be subject to all the requirements of 48 CFR 9904.420. When the requirements of 48 CFR 9904.420-50(e)(2) and 48 CFR 9904.420-50(f)(2) are not applicable, the following apply:

- (i) IR&D and B&P costs shall be allocated to final cost objectives on the same basis of allocation used for the G&A expense grouping of the profit center (see 31.001) in which the costs are incurred. However, when IR&D and B&P costs clearly benefit other profit centers or benefit the entire company, those costs shall be allocated through the G&A of the other profit centers or through the corporate G&A, as appropriate.
- (ii) If allocations of IR&D or B&P through the G&A base do not provide equitable cost allocation, the contracting officer may approve use of a different base.
- (c) Allowability. Except as provided in paragraphs (d) and (e) of this subsection, or as provided in agency regulations, costs for IR&D and B&P are allowable as indirect expenses on contracts to the extent that those costs are allocable and reasonable.
- (d) Deferred IR&D costs. (1) IR&D costs that were incurred in previous accounting periods are unallowable, except when a contractor has developed a specific product at its own risk in anticipation of recovering the development costs in the sale price of the product provided that—
- (i) The total amount of IR&D costs applicable to the product can be identified;
- (ii) The proration of such costs to sales of the product is reasonable;
- (iii) The contractor had no Government business during the time that the costs were incurred or did not allocate IR&D costs to Government contracts except to prorate the cost of developing a specific product to the sales of that product; and
- (iv) No costs of current IR&D programs are allocated to Government work except to prorate the costs of developing a specific product to the sales of that product.
- (2) When deferred costs are recognized, the contract (except firm-fixed-price and fixed-price with economic price adjustment) will include a specific provision setting forth the amount of deferred IR&D costs that are allocable to the contract. The negotiation memorandum will state the circumstances pertaining to the case and the reason for accepting the deferred costs.
- (e) Cooperative arrangements. (1) IR&D costs may be incurred by contractors working jointly with one or more non-Federal entities pursuant to a cooperative arrangement (for example, joint ventures, limited partnerships, teaming arrangements, and collaboration and consortium arrange-

- ments). IR&D costs also may include costs contributed by contractors in performing cooperative research and development agreements, or similar arrangements, entered into under—
- (i) Section 12 of the Stevenson-Wydler Technology Transfer Act of 1980 (15 U.S.C. 3710(a));
- (ii) Sections 203(c)(5) and (6) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(c)(5) and (6));
- (iii) 10 U.S.C. 2371 for the Defense Advanced Research Projects Agency; or
 - (iv) Other equivalent authority.
- (2) IR&D costs incurred by a contractor pursuant to these types of cooperative arrangements should be considered as allowable IR&D costs if the work performed would have been allowed as contractor IR&D had there been no cooperative arrangement.
- (3) Costs incurred in preparing, submitting, and supporting offers on potential cooperative arrangements are allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

31.205-19 Insurance and indemnification.

- (a) Insurance by purchase or by self-insuring includes coverage the contractor is required to carry, or to have approved, under the terms of the contract and any other coverage the contractor maintains in connection with the general conduct of its business. Any contractor desiring to establish a program of self-insurance applicable to contracts that are not subject to 48 CFR 9904.416, Accounting for Insurance Costs, shall comply with the self-insurance requirements of that standard as well as with Part 28 of this Regulation. However, approval of a contractor's insurance program in accordance with Part 28 does not constitute a determination as to the allowability of the program's cost. The amount of insurance costs which may be allowed is subject to the cost limitations and exclusions in the following paragraphs.
- Costs of insurance required or approved, and maintained by the contractor pursuant to the contract, are allowable.
- (2) Costs of insurance maintained by the contractor in connection with the general conduct of its business are allowable, subject to the following limitations:
- (i) Types and extent of coverage shall follow sound business practice, and the rates and premiums must be reasonable.
- (ii) Costs allowed for business interruption or other similar insurance must be limited to exclude coverage of profit.
- (iii) The cost of property insurance premiums for insurance coverage in excess of the acquisition cost of the insured assets is allowable only when the contractor has a formal written policy assuring that in the event the insured

property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement cost. If the contractor does not have such a formal written policy, the cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset is unallowable.

- (iv) Costs of insurance for the risk of loss of or damage to Government property are allowable only to the extent that the contractor is liable for such loss or damage and such insurance does not cover loss or damage that results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers or other equivalent representatives.
- (v) Contractors operating under a program of selfinsurance must obtain approval of the program when required by 28.308(a).
- (vi) Costs of insurance on the lives of officers, partners, or proprietors are allowable only to the extent that the insurance represents additional compensation (see 31.205-6).
- (3) Actual losses are unallowable unless expressly provided for in the contract, except—
- (i) Losses incurred under the nominal deductible provisions of purchased insurance, in keeping with sound business practice, are allowable for contracts not subject to 48 CFR 9904.416 and when the contractor did not establish a self-insurance program. Such contracts are not subject to the self-insurance requirements of 48 CFR 9904.416. For contracts subject to 48 CFR 9904.416, and for those made subject to the self-insurance requirements of that Standard as a result of the contractor's having established a self-insurance program (see paragraph (a) of this section), actual losses may be used as a basis for charges under a self-insurance program when the acrual amount of losses will not differ significantly from the projected average losses for the accounting period (see 48 CFR 9904.416.50(a)(2)(ii)). In those instances where an actual loss has occurred and the present value of the liability is determined under the provisions of 48 CFR 9904.416-50(a)(3)(ii), the allowable cost shall be limited to an amount computed using as a discount rate the interest rate determined by the Secretary of the Treasury pursuant to 50 U.S.C. App. 1215(b)(2) in effect at the time the loss is recognized. However, the full amount of a lump-sum settlement to be paid within a year of the date of settlement is allowable.
- (ii) Minor losses, such as spoilage, breakage, and disappearance of small hand tools that occur in the ordinary course of doing business and that are not covered by insurance are allowable.

- (4) The cost of insurance to protect the contractor against the costs of correcting its own defects in materials or workmanship is unallowable. However, insurance costs to cover fortuitous or casualty losses resulting from defects in materials or workmanship are allowable as a normal business expense.
- (5) Premiums for retroactive or backdated insurance written to cover occurred and known losses are unallowable.
- (b) If purchased insurance is available, the charge for any self-insurance coverage plus insurance administration expenses shall not exceed the cost of comparable purchased insurance plus associated insurance administration expenses.
- (c) Insurance provided by captive insurers (insurers owned by or under the control of the contractor) is considered self-insurance, and charges for it must comply with the self-insurance provisions of 48 CFR 9904.416. However, if the captive insurer also sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive market forces, the insurance will be considered purchased insurance.
- (d) The allowability of premiums for insurance purchased from fronting insurance companies (insurance companies not related to the contractor but who reinsure with a captive insurer of the contractor) shall not exceed the amount (plus reasonable fronting company charges for services rendered) which the contractor would have been allowed had it insured directly with the captive insurer.
- (e) Self-insurance charges for risks of catastrophic losses are not allowable (see 28.308(e)).
- (f) The Government is obligated to indemnify the contractor only to the extent authorized by law, as expressly provided for in the contract, except as provided in paragraph (a)(3) of this section.
- (g) Late premium payment charges related to employee deferred compensation plan insurance incurred pursuant to Section 4007 (29 U.S.C. 1307) or Section 4023 (29 U.S.C. 1323) of the Employee Retirement Income Security Act of 1974 are unallowable.

31.205-20 Interest and other financial costs.

Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees paid in connection with preparing prospectuses, and costs of preparing and issuing stock rights are unallowable (but see 31.205-28). However, interest assessed by State or local taxing authorities under the conditions specified in 31.205-41(a)(3) is allowable.

31.205-21 Labor relations costs.

(a) Costs incurred in maintaining satisfactory relations between the contractor and its employees, including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable.

(b) [This paragraph (b) is stayed indefinitely.] Costs incurred for activities that assist, promote, or deter unionization are unallowable.

31.205-22 Lobbying and political activity costs.

- (a) Costs associated with the following activities are unallowable:
- (1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activities;
- (2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;
 - (3) Any attempt to influence-
- (i) The introduction of Federal, state, or local legislation, or
- (ii) The enactment or modification of any pending Federal, state, or local legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation:
 - (4) Any attempt to influence-
- (i) The introduction of Federal, state, or local legislation, or
- (ii) The enactment or modification of any pending Federal, state, or local legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign;
- (5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable activities; or
- (6) Costs incurred in attempting to improperly influence (see 3.401), either directly or indirectly, an employee or officer of the Executive branch of the Federal Government to give consideration to or act regarding a regulatory or contract matter.
- (b) The following activities are excepted from the coverage of (a) of this section:

- (1) Providing a technical and factual presentation of information on a topic directly related to the performance of a contract through hearing testimony, statements or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this section for transportation, lodging or meals are unallowable unless incurred for the purpose of offering testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing.
- (2) Any lobbying made unallowable by paragraph (a)(3) of this subsection to influence state or local legislation in order to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract.
- (3) Any activity specifically authorized by statute to be undertaken with funds from the contract.
- (c) When a contractor seeks reimbursement for indirect costs, total lobbying costs shall be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs.
- (d) Contractors shall maintain adequate records to demonstrate that the certification of costs as being allowable or unallowable (see 42.703-2) pursuant to this subsection complies with the requirements of this subsection.
- (e) Existing procedures should be utilized to resolve in advance any significant questions or disagreements concerning the interpretation or application of this subsection.

31.205-23 Losses on other contracts.

An excess of costs over income under any other contract (including the contractor's contributed portion under costsharing contracts) is unallowable.

31.205-24 Maintenance and repair costs.

- (a) Costs necessary for the upkeep of property (including Government property, unless otherwise provided for) that neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see 31.205-11):
- (1) Normal maintenance and repair costs are allowable.

- (2) Extraordinary maintenance and repair costs are allowable, provided those costs are allocated to the applicable periods for purposes of determining contract costs (but see 31.109).
- (b) Expenditures for plant and equipment, including rehabilitation which should be capitalized and subject to depreciation, according to generally accepted accounting principles as applied under the contractor's established policy or, when applicable, according to 48 CFR 9904.404, Capitalization of Tangible Assets, are allowable only on a depreciation basis.

31.205-25 Manufacturing and production engineering costs.

- (a) The costs of manufacturing and production engineering effort as described in (1) through (4) of this paragraph are all allowable:
- (1) Developing and deploying new or improved materials, systems, processes, methods, equipment, tools and techniques that are or are expected to be used in producing products or services;
 - (2) Developing and deploying pilot production lines;
- (3) Improving current production functions, such as plant layout, production scheduling and control, methods and job analysis, equipment capabilities and capacities, inspection techniques, and tooling analysis (including tooling design and application improvements); and
- (4) Material and manufacturing producibility analysis for production suitability and to optimize manufacturing processes, methods, and techniques.
 - (b) This cost principle does not cover-
- (1) Basic and applied research effort (as defined in 31.205-18(a)) related to new technology, materials, systems, processes, methods, equipment, tools and techniques. Such technical effort is governed by 31.205-18, Independent research and development and bid and proposal costs; and
- (2) Development effort for manufacturing or production materials, systems, processes, methods, equipment, tools, and techniques that are intended for sale is also governed by 31.205-18.
- (c) Where manufacturing or production development costs are capitalized or required to be capitalized under the contractor's capitalization policies, allowable cost will be determined in accordance with the requirements of 31.205-11, Depreciation.

31.205-26 Material costs.

(a) Material costs include the costs of such items as raw materials, parts, sub-assemblies, components, and manufacturing supplies, whether purchased or manufactured by the contractor, and may include such collateral items as inbound transportation and intransit insurance. In computing material costs, consideration shall be given to reasonable overruns, spoilage, or defective work (unless otherwise provided in

- any contract provision relating to inspecting and correcting defective work). These costs are allowable, subject to the requirements of paragraphs (b) through (e) of this section.
- (b) Costs of material shall be adjusted for income and other credits, including available trade discounts, refunds, rebates, allowances, and cash discounts, and credits for scrap, salvage, and material returned to vendors. Such income and other credits shall either be credited directly to the cost of the material or be allocated as a credit to indirect costs. When the contractor can demonstrate that failure to take cash discounts was reasonable, lost discounts need not be credited.
- (c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs; provided, such adjustments relate to the period of contract performance.
- (d) When materials are purchased specifically for and are identifiable solely with performance under a contract, the actual purchase cost of those materials should be charged to the contract. If material is issued from stores, any generally recognized method of pricing such material is acceptable if that method is consistently applied and the results are equitable. When estimates of future material costs are required, current market price or anticipated acquisition cost may be used, but the basis of pricing must be disclosed.
- (e) Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subdivisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be at price when it is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control, and when the item being transferred qualifies for an exception under 15.403-1(b) and the contracting officer has not determined the price to be unreasonable.
- (f) When a commercial item under paragraph (e) of this subsection is transferred at a price based on a catalog or market price, the price should be adjusted to reflect the quantities being acquired and may be adjusted to reflect the actual cost of any modifications necessary because of contract requirements.

31.205-27 Organization costs.

(a) Except as provided in paragraph (b) of this subsection, expenditures in connection with (1) planning or executing the organization or reorganization of the corporate structure of a business, including mergers and acquisitions, (2) resisting or planning to resist the reorganization of the corporate structure of a business or a change in the controlling interest in the ownership of a business, and (3) raising capital (net worth plus long-term liabilities), are unallowable. Such

expenditures include but are not limited to incorporation fees and costs of attorneys, accountants, brokers, promoters and organizers, management consultants and investment counselors, whether or not employees of the contractor. Unallowable "reorganization" costs include the cost of any change in the contractor's financial structure, excluding administrative costs of short-term borrowings for working capital, resulting in alterations in the rights and interests of security holders, whether or not additional capital is raised.

- (b) The cost of activities primarily intended to provide compensation will not be considered organizational costs subject to this subsection, but will be governed by 31.205-6. These activities include acquiring stock for—
 - (1) Executive bonuses.
 - (2) Employee savings plans, and
 - (3) Employee stock ownership plans.

31.205-28 Other business expenses.

The following types of recurring costs are allowable when allocated on an equitable basis:

- (a) Registry and transfer charges resulting from changes in ownership of securities issued by the contractor.
 - (b) Cost of shareholders' meetings.
 - (c) Normal proxy solicitations.
 - (d) Preparing and publishing reports to shareholders.
- (e) Preparing and submitting required reports and forms to taxing and other regulatory bodies.
 - (f) Incidental costs of directors' and committee meetings.
 - (g) Other similar costs.

31.205-29 Plant protection costs.

Costs of items such as-

- (a) Wages, uniforms, and equipment of personnel engaged in plant protection,
 - (b) Depreciation on plant protection capital assets, and
- (c) Necessary expenses to comply with military requirements, are allowable.

31.205-30 Patent costs.

- (a) The following patent costs are allowable to the extent that they are incurred as requirements of a Government contract (but see 31.205-33):
- (1) Costs of preparing invention disclosures, reports, and other documents.
- (2) Costs for searching the art to the extent necessary to make the invention disclosures.
- (3) Other costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is to be conveyed to the Government.
- (b) General counseling services relating to patent matters, such as advice on patent laws, regulations, clauses, and employee agreements, are allowable (but see 31.205-33).

(c) Other than those for general counseling services, patent costs not required by the contract are unallowable. (See also 31.205-37.)

31.205-31 Plant reconversion costs.

Plant reconversion costs are those incurred in restoring or rehabilitating the contractor's facilities to approximately the same condition existing immediately before the start of the Government contract, fair wear and tear excepted. Reconversion costs are unallowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon before costs are incurred. Care should be exercised to avoid duplication through allowance as contingencies, additional profit or fee, or in other contracts.

31.205-32 Precontract costs.

Precontract costs means costs incurred before the effective date of the contract directly pursuant to the negotiation and in anticipation of the contract award when such incurrence is necessary to comply with the proposed contract delivery schedule. These costs are allowable to the extent that they would have been allowable if incurred after the date of the contract (see 31.109).

31.205-33 Professional and consultant service costs.

- (a) Definition. "Professional and consultant services," as used in this subsection, means those services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the contractor. Examples include those services acquired by contractors or subcontractors in order to enhance their legal, economic, financial, or technical positions. Professional and consultant services are generally acquired to obtain information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance, such as studies, analyses, evaluations, liaison with Government officials, or other forms of representation.
- (b) Costs of professional and consultant services are allowable subject to this paragraph and paragraphs (c) through (f) of this subsection when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government (but see 31.205-30 and 31.205-47).
- (c) Costs of professional and consultant services performed under any of the following circumstances are unallowable:
- (1) Services to improperly obtain, distribute, or use information or data protected by law or regulation (e.g., 52.215-1(e), Restriction on Disclosure and Use of Data).

- (2) Services that are intended to improperly influence the contents of solicitations, the evaluation of proposals or quotations, or the selection of sources for contract award, whether award is by the Government, or by a prime contractor or subcontractor.
- (3) Any other services obtained, performed, or otherwise resulting in violation of any statute or regulation prohibiting improper business practices or conflicts of interest.
- (4) Services performed which are not consistent with the purpose and scope of the services contracted for or otherwise agreed to.
- (d) In determining the allowability of costs (including retainer fees) in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the contracting officer shall consider the following factors, among others:
- (1) The nature and scope of the service rendered in relation to the service required.
- (2) The necessity of contracting for the service, considering the contractor's capability in the particular area.
- (3) The past pattern of acquiring such services and their costs, particularly in the years prior to the award of Government contracts.
- (4) The impact of Government contracts on the contractor's business.
- (5) Whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly when the services rendered are not of a continuing nature and have little relationship to work under Government contracts.
- (6) Whether the service can be performed more economically by employment rather than by contracting.
- (7) The qualifications of the individual or concern rendering the service and the customary fee charged, especially on non-Government contracts.
- (8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, termination provisions).
- (e) Retainer fees, to be allowable, must be supported by evidence that—
- (1) The services covered by the retainer agreement are necessary and customary;
- (2) The level of past services justifies the amount of the retainer fees (if no services were rendered, fees are not automatically unallowable);
- (3) The retainer fee is reasonable in comparison with maintaining an in-house capability to perform the covered services, when factors such as cost and level of expertise are considered; and
- (4) The actual services performed are documented in accordance with paragraph (f) of this subsection.

- (f) Fees for services rendered shall be allowable only when supported by evidence of the nature and scope of the service furnished. (See also 31.205-38(f).) However, retainer agreements generally are not based on specific statements of work. Evidence necessary to determine that work performed is proper and does not violate law or regulation shall include—
- (1) Details of all agreements (e.g., work requirements, rate of compensation, and nature and amount of other expenses, if any) with the individuals or organizations providing the services and details of actual services performed;
- (2) Invoices or billings submitted by consultants, including sufficient detail as to the time expended and nature of the actual services provided; and
- (3) Consultants' work products and related documents, such as trip reports indicating persons visited and subjects discussed, minutes of meetings, and collateral memoranda and reports.

31.205-34 Recruitment costs.

- (a) Subject to paragraph (b) of this subsection, the following costs are allowable:
 - (1) Costs of help-wanted advertising.
- (2) Costs of operating an employment office needed to secure and maintain an adequate labor force.
- (3) Costs of operating an aptitude and educational testing program.
- (4) Travel costs of employees engaged in recruiting personnel.
 - (5) Travel costs of applicants for interviews.
- (6) Costs for employment agencies, not in excess of standard commercial rates.
- (b) Help-wanted advertising costs are unallowable if the advertising—
- (1) Does not describe specific positions or classes of positions; or
- (2) Includes material that is not relevant for recruitment purposes, such as extensive illustrations or descriptions of the company's products or capabilities.

31.205-35 Relocation costs.

- (a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period, but in either event for not less than 12 months) of an existing employee or upon recruitment of a new employee. The following types of relocation costs are allowable as noted, subject to paragraphs (b) and (f) of this subsection:
- (1) Cost of travel of the employee and members of the immediate family (see 31.205-46) and transportation of the household and personal effects to the new location.

- (2) Cost of finding a new home, such as advance trips by employees and spouses to locate living quarters, and temporary lodging during the transition periods not exceeding separate cumulative totals of 60 days for employees and 45 days for spouses and dependents, including advance trip time.
- (3) Closing costs (i.e., brokerage fees, legal fees, appraisal fees, points, finance charges, etc.) incident to the disposition of actual residence owned by the employee when notified of transfer, except that these costs when added to the costs described in paragraph (a)(4) of this section shall not exceed 14 percent of the sales price of the property sold.
- (4) Continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing up expenses), utilities, taxes, property insurance, mortgage interest, after settlement date or lease date of new permanent residence, except that these costs when added to the costs described in paragraph (a)(3) of this section, shall not exceed 14 percent of the sales price of the property sold.
- (5) Other necessary and reasonable expenses normally incident to relocation, such as disconnecting and connecting household appliances; automobile registration; driver's license and use taxes; cutting and fitting rugs, draperies, and curtains; forfeited utility fees and deposits; and purchase of insurance against damage to or loss of personal property while in transit.
- (6) Costs incident to acquiring a home in a new location, except that—
- (i) These costs will not be allowable for existing employees or newly recruited employees who, before the relocation, were not homeowners and
- (ii) The total costs shall not exceed 5 percent of the purchase price of the new home.
- (7) Mortgage interest differential payments, except that these costs are not allowable for existing or newly recruited employees who, before the relocation, were not homeowners and the total payments are limited to an amount determined as follows:
- (i) The difference between the mortgage interest rates of the old and new residences times the current balance of the old mortgage times 3 years.
- (ii) When mortgage differential payments are made on a lump sum basis and the employee leaves or is transferred again in less than 3 years, the amount initially recognized shall be proportionately adjusted to reflect payments only for the actual time of the relocation.

- (8) Rental differential payments covering situations where relocated employees retain ownership of a vacated home in the old location and rent at the new location. The rented quarters at the new location must be comparable to those vacated, and the allowable differential payments may not exceed the actual rental costs for the new home, less the fair market rent for the vacated home times 3 years.
 - (9) Cost of canceling an unexpired lease.
- (b) The costs described in paragraph (a) of this section must also meet the following criteria to be considered allowable:
 - (1) The move must be for the benefit of the employer.
- (2) Reimbursement must be in accordance with an established policy or practice that is consistently followed by the employer and is designed to motivate employees to relocate promptly and economically.
- (3) The costs must not otherwise be unallowable under Subpart 31.2.
- (4) Amounts to be reimbursed shall not exceed the employee's actual expenses, except that for miscellaneous costs of the type discussed in paragraph (a)(5) of this section, a flat amount, not to exceed \$1,000, may be allowed in lieu of actual costs.
 - (c) The following types of costs are not allowable:
 - (1) Loss on sale of a home.
- (2) Costs incident to acquiring a home in a new location as follows:
 - (i) Real estate brokers fees and commissions.
 - (ii) Cost of litigation.
- (iii) Real and personal property insurance against damage or loss of property.
 - (iv) Mortgage life insurance.
- (v) Owner's title policy insurance when such insurance was not previously carried by the employee on the old residence (however, cost of a mortgage title policy is allowable).
- (vi) Property taxes and operating or maintenance costs.
- (3) Continuing mortgage principal payments on residence being sold.
- (4) Payments for employee income or FICA (social security) taxes incident to reimbursed relocation costs.
- (5) Payments for job counseling and placement assistance to employee spouses and dependents who were not employees of the contractor at the old location.
- (6) Costs incident to furnishing equity or nonequity loans to employees or making arrangements with lenders for employees to obtain lower-than-market rate mortgage loans.
- (d) If relocation costs for an employee have been allowed either as an allocable indirect or direct cost, and the employee resigns within 12 months for reasons within the employee's control, the contractor shall refund or credit the relocation costs to the Government.

- (e) Subject to the requirements of paragraphs (a) through (d) of this section, the costs of family movements and of personnel movements of a special or mass nature are allowable. The cost, however, should be assigned on the basis of work (contracts) or time period benefited.
- (f) Relocation costs (both outgoing and return) of employees who are hired for performance on specific contracts or long-term field projects are allowable if—
- (1) The term of employment is not less than 12 months;
- (2) The employment agreement specifically limits the duration of employment to the time spent on the contract or field project for which the employee is hired;
- (3) The employment agreement provides for return relocation to the employee's permanent and principal home immediately prior to the outgoing relocation, or other location of equal or lesser cost; and
- (4) The relocation costs are determined under the rules of paragraphs (a) through (d) of this section. However, the costs to return employees, who are released from employment upon completion of field assignments pursuant to their employment agreements, are not subject to the refund or credit requirement of paragraph (d).

31.205-36 Rental costs.

- (a) This subsection is applicable to the cost of renting or leasing real or personal property acquired under "operating leases" as defined in Statement of Financial Accounting Standards No. 13 (FAS-13), Accounting for Leases. Compliance with 31.205-11(m) requires that assets acquired by means of capital leases, as defined in FAS-13, shall be treated as purchased assets; i.e., be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges, or over the lease term as amortization charges, as appropriate (but see paragraph (b)(4) of this section).
 - (b) The following costs are allowable:
- (1) Rental costs under operating leases, to the extent that the rates are reasonable at the time of the lease decision, after consideration of—
 - (i) Rental costs of comparable property, if any;
 - (ii) Market conditions in the area;
- (iii) The type, life expectancy, condition, and value of the property leased;
 - (iv) Alternatives available; and
 - (v) Other provisions of the agreement.
- (2) Rental costs under a sale and leaseback arrangement only up to the amount the contractor would be allowed if the contractor retained title.
- (3) Charges in the nature of rent for property between any divisions, subsidiaries, or organizations under common control, to the extent that they do not exceed the normal costs of ownership, such as depreciation, taxes, insurance,

- facilities capital cost of money, and maintenance (excluding interest or other unallowable costs pursuant to Part 31), provided that no part of such costs shall duplicate any other allowed cost. Rental cost of personal property leased from any division, subsidiary, or affiliate of the contractor under common control, that has an established practice of leasing the same or similar property to unaffiliated lessees shall be allowed in accordance with paragraph (b)(1) of this subsection.
- (4) Rental costs under leases entered into before March 1, 1970 for the remaining term of the lease (excluding options not exercised before March 1, 1970) to the extent they would have been allowable under Defense Acquisition Regulation (formerly ASPR) 15-205.34 or Federal Procurement Regulations section 1-15.205-34 in effect January 1, 1969
- (c) The allowability of rental costs under unexpired leases in connection with terminations is treated in 31.205-42(e).

31.205-37 Royalties and other costs for use of patents.

- (a) Royalties on a patent or amortization of the cost of purchasing a patent or patent rights necessary for the proper performance of the contract and applicable to contract products or processes are allowable unless—
- (1) The Government has a license or the right to a free use of the patent;
- (2) The patent has been adjudicated to be invalid, or has been administratively determined to be invalid;
 - (3) The patent is considered to be unenforceable; or
 - (4) The patent is expired.
- (b) Care should be exercised in determining reasonableness when the royalties may have been arrived at as a result of less-than-arm's-length bargaining; e.g., royalties—
- (1) Paid to persons, including corporations, affiliated with the contractor;
- (2) Paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government contract would be awarded; or
- (3) Paid under an agreement entered into after the contract award.
- (c) In any case involving a patent formerly owned by the contractor, the royalty amount allowed should not exceed the cost which would have been allowed had the contractor retained title.
 - (d) See 31.109 regarding advance agreements.

31.205-38 Selling costs.

- (a) "Selling" is a generic term encompassing all efforts to market the contractor's products or services, some of which are covered specifically in other subsections of 31.205. Selling activity includes the following broad categories:
 - (1) Advertising.

- (2) Corporate image enhancement including broadly-targeted sales efforts, other than advertising.
 - (3) Bid and proposal costs.
 - (4) Market planning.
 - (5) Direct selling.
- (b) Advertising costs are defined at 31.205-1(b) and are subject to the allowability provisions of 31.205-1(d) and (f). Corporate image enhancement activities are included within the definitions of public relations at 31.205-1(a) and entertainment at 31.205-14 and are subject to the allowability provisions at 31.205-1(e) and (f) and 31.205-14, respectively. Bid and proposal costs are defined at 31.205-18 and have their allowability controlled by that subsection. Market planning involves market research and analysis and generalized management planning concerned with development of the contractor's business. The allowability of long-range market planning costs is controlled by the provisions of 31.205-12. Other market planning costs are allowable to the extent that they are reasonable and not in excess of the limitations of paragraph (c)(2) of this subsection. Costs of activities which are correctly classified and disallowed under cost principles referenced in this paragraph (b) are not to be reconsidered for reimbursement under any other provision of this subsec-
- (c)(1) Direct selling efforts are those acts or actions to induce particular customers to purchase particular products or services of the contractor. Direct selling is characterized by person-to-person contact and includes such activities as familiarizing a potential customer with the contractor's products or services, conditions of sale, service capabilities, etc. It also includes negotiation, liaison between customer and contractor personnel, technical and consulting activities, individual demonstrations, and any other activities having as their purpose the application or adaptation of the contractor's products or services for a particular customer's use. The cost of direct selling efforts is allowable if reasonable in amount.
- (2) The costs of broadly targeted and direct selling efforts and market planning other than long-range, that are incurred in connection with a significant effort to promote export sales of products normally sold to the U.S. Government, including the costs of exhibiting and demonstrating such products, are allowable on contracts with the U.S. Government provided the costs are allocable, reasonable, and otherwise allowable under this Subpart 31.2.
- (d) The costs of any selling efforts other than those addressed in paragraphs (b) or (c) of this subsection are unallowable.
- (e) Costs of the type identified in paragraphs (b), (c), and (d) of this subsection are often commingled on the contractor's books in the selling expense account because these activities are performed by the sales departments. However, identification and segregation of unallowable costs is required under the provisions of 31.201-6 and 30.405, and

- such costs are not allowable merely because they are incurred in connection with allowable selling activities.
- (f) Norwithstanding any other provision of this subsection, sellers' or agents' compensation, fees, commissions, percentages, retainer or brokerage fees, whether or not contingent upon the award of contracts, are allowable only when paid to bona fide employees or established commercial or selling agencies maintained by the contractor for the purpose of securing business.

31.205-39 Service and warranty costs.

Service and warranty costs include those arising from fulfillment of any contractual obligation of a contractor to provide services such as installation, training, correcting defects in the products, replacing defective parts, and making refunds in the case of inadequate performance. When not inconsistent with the terms of the contract, service and warranty costs are allowable. However, care should be exercised to avoid duplication of the allowance as an element of both estimated product cost and risk.

31.205-40 Special tooling and special test equipment costs.

- (a) The terms "special tooling" and "special test equipment" are defined in 45.101.
- (b) The cost of special tooling and special test equipment used in performing one or more Government contracts is allowable and shall be allocated to the specific Government contract or contracts for which acquired, except that the cost of—
- (1) Items acquired by the contractor before the effective date of the contract (or replacement of such items), whether or not altered or adapted for use in performing the contract, and
- (2) Items which the contract schedule specifically excludes, shall be allowable only as depreciation or amortization.
- (c) When items are disqualified as special tooling or special test equipment because with relatively minor expense they can be made suitable for general purpose use and have a value as such commensurate with their value as special tooling or special test equipment, the cost of adapting the items for use under the contract and the cost of returning them to their prior configuration are allowable.

31.205-41 Taxes.

- (a) The following types of costs are allowable:
- (1) Federal, State, and local taxes (see Part 29), except as otherwise provided in paragraph (b) of this section that are required to be and are paid or accrued in accordance with generally accepted accounting principles. Fines and penalties are not considered taxes.

- (2) Taxes otherwise allowable under paragraph (a)(1) of this section, but upon which a claim of illegality or erroneous assessment exists; provided the contractor, before paying such taxes—
- (i) Promptly requests instructions from the contracting officer concerning such taxes; and
- (ii) Takes all action directed by the contracting officer arising out of paragraph (2)(i) of this section or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, to—
 - (A) Determine the legality of the assessment or
 - (B) Secure a refund of such taxes.
- (3) Pursuant to paragraph (a)(2) of this section, the reasonable costs of any action taken by the contractor at the direction or with the concurrence of the contracting officer. Interest or penalties incurred by the contractor for non-payment of any tax at the direction of the contracting officer or by reason of the failure of the contracting officer to ensure timely direction after a prompt request.
- (4) The Environmental Tax found at section 59A of the Internal Revenue Code, also called the "Superfund Tax."
 - (b) The following types of costs are not allowable:
 - (1) Federal income and excess profits taxes.
- (2) Taxes in connection with financing, refinancing, refunding operations, or reorganizations (see 31.205-20 and 31.205-27).
- (3) Taxes from which exemptions are available to the contractor directly, or available to the contractor based on an exemption afforded the Government, except when the contracting officer determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government. When partial exemption from a tax is attributable to Government contract activity, taxes charged to such work in excess of that amount resulting from application of the preferential treatment are unallowable. These provisions intend that tax preference attributable to Government contract activity be realized by the Government. The term "exemption" means freedom from taxation in whole or in part and includes a tax abatement or reduction resulting from mode of assessment, method of calculation, or otherwise.
- (4) Special assessments on land that represent capital improvements.
- (5) Taxes (including excises) on real or personal property, or on the value, use, possession or sale thereof, which is used solely in connection with work other than on Government contracts (see paragraph (c) of this section).
- (6) Any excise tax in subtitle D, chapter 43 of the Internal Revenue Code of 1986, as amended. That chapter includes excise taxes imposed in connection with qualified pension plans, welfare plans, deferred compensation plans, or other similar types of plans.

- (7) Income tax accruals designed to account for the tax effects of differences between taxable income and pretax income as reflected by the books of account and financial statements.
- (c) Taxes on property (see paragraph (b)(5) of this section) used solely in connection with either non-Government or Government work should be considered directly applicable to the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained; e.g., taxes on contractor-owned work-in-process which is used solely in connection with non-Government work should be allocated to such work; taxes on contractor-owned work-in-process inventory (and Government-owned work-in-process inventory when taxed) used solely in connection with Government work should be charged to such work. The cost of taxes incurred on property used in both Government and non-Government work shall be apportioned to all such work based upon the use of such property on the respective final cost objectives.
- (d) Any taxes, interest, or penalties that were allowed as contract costs and are refunded to the contractor shall be credited or paid to the Government in the manner it directs. If a contractor or subcontractor obtains a foreign tax credit that reduces its U.S. Federal income tax because of the payment of any tax or duty allowed as contract costs, and if those costs were reimbursed by a foreign government, the amount of the reduction shall be paid to the Treasurer of the United States at the time the Federal income tax return is filed. However, any interest actually paid or credited to a contractor incident to a refund of tax, interest, or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the contractor had been reimbursed by the Government for the taxes, interest, or penalties.

31.205-42 Termination costs.

Contract terminations generally give rise to the incurrence of costs or the need for special treatment of costs that would not have arisen had the contract not been terminated. The following cost principles peculiar to termination situations are to be used in conjunction with the other cost principles in Subpart 31.2:

(a) Common items. The costs of items reasonably usable on the contractor's other work shall not be allowable unless the contractor submits evidence that the items could not be retained at cost without sustaining a loss. The contracting officer should consider the contractor's plans and orders for current and planned production when determining if items can reasonably be used on other work of the contractor. Contemporaneous purchases of common items by the contractor shall be regarded as evidence that such items are reasonably usable on the contractor's other work. Any acceptance of common items as allocable to the terminated portion of the

contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

- (b) Costs continuing after termination. Despite all reasonable efforts by the contractor, costs which cannot be discontinued immediately after the effective date of termination are generally allowable. However, any costs continuing after the effective date of the termination due to the negligent or willful failure of the contractor to discontinue the costs shall be unallowable.
- (c) Initial costs. Initial costs, including starting load and preparatory costs, are allowable as follows:
- (1) Starting load costs not fully absorbed because of termination are nonrecurring labor, material, and related overhead costs incurred in the early part of production and result from factors such as—
 - (i) Excessive spoilage due to inexperienced labor;
- (ii) Idle time and subnormal production due to testing and changing production methods;
 - (iii) Training; and
- (iv) Lack of familiarity or experience with the product, materials, or manufacturing processes.
- (2) Preparatory costs incurred in preparing to perform the terminated contract include such costs as those incurred for initial plant rearrangement and alterations, management and personnel organization, and production planning. They do not include special machinery and equipment and starting load costs.
- (3) When initial costs are included in the settlement proposal as a direct charge, such costs shall not also be included in overhead. Initial costs attributable to only one contract shall not be allocated to other contracts.
- (4) If initial costs are claimed and have not been segregated on the contractor's books, they shall be segregated for settlement purposes from cost reports and schedules reflecting that high unit cost incurred during the early stages of the contract.
- (5) If the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the contract immediately before termination; however, if the contract includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours.
- (d) Loss of useful value. Loss of useful value of special tooling, and special machinery and equipment is generally allowable, provided—
- (1) The special tooling, or special machinery and equipment is not reasonably capable of use in the other work of the contractor;
- (2) The Government's interest is protected by transfer of title or by other means deemed appropriate by the contracting officer; and

- (3) The loss of useful value for any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other Government contracts for which the special tooling, or special machinery and equipment was acquired.
- (e) Rental under unexpired leases. Rental costs under unexpired leases, less the residual value of such leases, are generally allowable when shown to have been reasonably necessary for the performance of the terminated contract, if—
- The amount of rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and
- (2) The contractor makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.
- (f) Alterations of leased property. The cost of alterations and reasonable restorations required by the lease may be allowed when the alterations were necessary for performing the contract.
- (g) Settlement expenses. (1) Settlement expenses, including the following, are generally allowable:
- (i) Accounting, legal, clerical, and similar costs reasonably necessary for—
- (A) The preparation and presentation, including supporting data, of settlement claims to the contracting officer, and
- (B) The termination and settlement of subcontracts.
- (ii) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the contract.
- (iii) Indirect costs related to salary and wages incurred as settlement expenses in (i) and (ii); normally, such indirect costs shall be limited to payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs.
- (2) If settlement expenses are significant, a cost account or work order shall be established to separately identify and accumulate them.
- (h) Subcontractor claims. Subcontractor claims, including the allocable portion of the claims common to the contract and to other work of the contractor, are generally allowable. An appropriate share of the contractor's indirect expense may be allocated to the amount of settlements with subcontractors; provided, that the amount allocated is reasonably proportionate to the relative benefits received and is otherwise consistent with 31.201-4 and 31.203(c). The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

31.205-43 Trade, business, technical and professional activity costs.

The following types of costs are allowable:

- (a) Memberships in trade, business, technical, and professional organizations.
- (b) Subscriptions to trade, business, professional, or other technical periodicals.
- (c) When the principal purpose of a meeting, convention, conference, symposium, or seminar is the dissemination of trade, business, technical or professional information or the stimulation of production or improved productivity—
- (1) Costs of organizing, setting up, and sponsoring the meetings, conventions, symposia, etc., including rental of meeting facilities, transportation, subsistence, and incidental costs;
- (2) Costs of attendance by contractor employees, including travel costs (see 31.205-46); and
- (3) Costs of attendance by individuals who are not employees of the contractor, provided—
- (i) Such costs are not also reimbursed to the individual by the employing company or organization, and
- (ii) The individuals attendance is essential to achieve the purpose of the conference, meeting, convention, symposium, etc.

31.205-44 Training and education costs.

- (a) Allowable costs. Training and education costs are allowable to the extent indicated below.
- (b) Vocational training. Costs of preparing and maintaining a noncollege level program of instruction, including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, are allowable. These costs include—
- (1) Salaries or wages of trainees (excluding overtime compensation).
- (2) Salaries of the director of training and staff when the training program is conducted by the contractor,
- (3) Tuition and fees when the training is in an institution not operated by the contractor, and/or
 - (4) Training materials and textbooks.
- (c) Part-time college level education. Allowable costs of part-time college education at an undergraduate or postgraduate level, including that provided at the contractor's own facilities, are limited to—
- (1) Fees and tuition charged by the educational institution, or, instead of tuition, instructors' salaries and the related share of indirect cost of the educational institution, to the extent that the sum thereof is not in excess of the tuition that would have been paid to the participating educational institution;
- (2) Salaries and related costs of instructors who are employees of the contractor;
 - (3) Training materials and textbooks; and

- (4) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours. In unusual cases, the period may be extended (see paragraph (h) of this subsection).
- (d) Full-time education. Costs of tuition, fees, training materials and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the contractor's own facilities, at a postgraduate but not undergraduate college level, are allowable only when the course or degree pursued is related to the field in which the employee is working or may reasonably be expected to work and are limited to a total period not to exceed 2 school years or the length of the degree program, whichever is less, for each employee so trained.
- (e) Specialized programs. Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of managers or to prepare employees for such positions are allowable. Such costs include enrollment fees and related charges and employees' salaries, subsistence, training materials, textbooks, and travel. Costs allowable under this paragraph do not include costs for courses that are part of a degree-oriented curriculum, which are only allowable pursuant to paragraphs (c) and (d) of this subsection.
- (f) Other expenses. Maintenance expense and normal depreciation or fair rental on facilities owned or leased by the contractor for training purposes are allowable in accordance with 31.205-11, 31.205-17, 31.205-24, and 31.205-36.
- (g) Grants. Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, and fellowships are considered contributions and are unallowable.
- (h) Advance agreements. (1) Training and education costs in excess of those otherwise allowable under paragraphs (c) and (d) of this subsection, including subsistence, salaries or any other emoluments, may be allowed to the extent set forth in an advance agreement negotiated under 31.109. To be considered for an advance agreement, the contractor must demonstrate that the costs are consistently incurred under an established managerial, engineering, or scientific training and education program, and that the course or degree pursued is related to the field in which the employees are now working or may reasonably be expected to work. Before entering into the advance agreement, the contracting officer shall give consideration to such factors as—
- (i) The length of employees' service with the contractor;
 - (ii) Employees' past performance and potential;
- (iii) Whether employees are in formal development programs; and
 - (iv) The total number of participating employees.

- (2) Any advance agreement must include a provision requiring the contractor to refund to the Government training and education costs for employees who resign within 12 months of completion of such training or education for reasons within an employee's control.
- (i) Training or education costs for other than bona fide employees. Costs of tuition, fees, textbooks, and similar or related benefits provided for other than bona fide employees are unallowable, except that the costs incurred for educating employee dependents (primary and secondary level studies) when the employee is working in a foreign country where public education is not available and where suitable private education is inordinately expensive may be included in overseas differential.
- (j) Employee dependent education plans. Costs of college plans for employee dependents are unallowable.

31.205-45 Transportation costs.

Allowable transportation costs include freight, express, cartage, and postage charges relating to goods purchased, in process, or delivered. When these costs can be identified with the items involved, they may be directly costed as transportation costs or added to the cost of such items. When identification with the materials received cannot be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the contractor follows a consistent and equitable procedure. Outbound freight, if reimbursable under the terms of the contract, shall be treated as a direct cost.

31.205-46 Travel costs.

- (a) Costs for transportation, lodging, meals, and incidental expenses. (1) Costs incurred by contractor personnel on official company business are allowable, subject to the limitations contained in this subsection. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.
- (2) Except as provided in paragraph (a)(3) of this subsection, costs incurred for lodging, meals, and incidental expenses (as defined in the regulations cited in (a)(2)(i) through (iii) of this paragraph) shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the—
- (i) Federal Travel Regulations, prescribed by the General Services Administration, for travel in the conterminous 48 United States, available on a subscription basis from the:

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(ii) Joint Travel Regulation, Volume 2, DoD Civilian Personnel, Appendix A, prescribed by the Department of Defense, for travel in Alaska, Hawaii, The Commonwealth of Puerto Rico, and territories and possessions of the United States, available on a subscription basis from the—

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Stock No. 908-010-00000-1; or

(iii) Standardized Regulations (Government Civilians, Foreign Areas), Section 925, "Maximum Travel Per Diem Allowances for Foreign Areas," prescribed by the Department of State, for travel in areas not covered in (a)(2)(i) and (ii) of this paragraph, available on a subscription basis from the—

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- (3) In special or unusual situations, actual costs in excess of the above-referenced maximum per diem rates are allowable provided that such amounts do not exceed the higher amounts authorized for Federal civilian employees as permitted in the regulations referenced in (a)(2)(i), (ii), or (iii) of this subsection. For such higher amounts to be allowable, all of the following conditions must be met:
- (i) One of the conditions warranting approval of the actual expense method, as set forth in the regulations referenced in paragraphs (a)(2)(i), (ii), or (iii) of this subsection, must exist.
- (ii) A written justification for use of the higher amounts must be approved by an officer of the contractor's organization or designee to ensure that the authority is properly administered and controlled to prevent abuse.
- (iii) If it becomes necessary to exercise the authority to use the higher actual expense method repetitively or on a continuing basis in a particular area, the contractor must obtain advance approval from the contracting officer.
- (iv) Documentation to support actual costs incurred shall be in accordance with the contractor's established practices, subject to paragraph (a)(7) of this subsection, and provided that a receipt is required for each expenditure of \$75.00 or more. The approved justification required by paragraph (a)(3)(ii) and, if applicable, paragraph (a)(3)(iii) of this subsection must be retained.

- (4) Paragraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in subdivisions (a)(2)(i), (ii), and (iii) of this subsection in their entirety. Only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated herein.
- (5) An advance agreement (see 31.109) with respect to compliance with paragraphs (a)(2) and (a)(3) of this subsection may be useful and desirable.
- (6) The maximum per diem rates referenced in paragraph (a)(2) of this subsection generally would not constitute a reasonable daily charge—
 - (i) When no lodging costs are incurred; and/or
- (ii) On partial travel days (e.g., day of departure and return).

Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulation or Joint Travel Regulations, they must result in a reasonable charge.

- (7) Costs shall be allowable only if the following information is documented—
- (i) Date and place (city, town, or other similar designation) of the expenses;
 - (ii) Purpose of the trip; and
- (iii) Name of person on trip and that person's title or relationship to the contractor.
- (b) Travel costs incurred in the normal course of overall administration of the business are allowable and shall be treated as indirect costs.
- (c) Travel costs directly attributable to specific contract performance are allowable and may be charged to the contract under 31.202.
- (d) Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.
- (e)(1) "Cost of travel by contractor-owned, -leased, or -chartered aircraft," as used in this paragraph, includes the cost of lease, charter, operation (including personnel), maintenance, depreciation, insurance, and other related costs.

- (2) The costs of travel by contractor-owned, -leased, or -chartered aircraft are limited to the standard airfare described in paragraph (d) of this subsection for the flight destination unless travel by such aircraft is specifically required by contract specification, term, or condition, or a higher amount is approved by the contracting officer. A higher amount may be agreed to when one or more of the circurnstances for justifying higher than standard airfare listed in paragraph (d) of this subsection are applicable, or when an advance agreement under paragraph (e)(3) of this subsection has been executed. In all cases, travel by contractor-owned, leased, or -chartered aircraft must be fully documented and justified. For each contractor-owned, -leased, or -chartered aircraft used for any business purpose which is charged or allocated, directly or indirectly, to a Government contract, the contractor must maintain and make available manifest/ logs for all flights on such company aircraft. As a minimum, the manifest/log shall indicate-
 - (i) Date, time, and points of departure;
 - (ii) Destination, date, and time of arrival;
- (iii) Name of each passenger and relationship to the contractor;
 - (iv) Authorization for trip; and
 - (v) Purpose of trip.
- (3) Where an advance agreement is proposed (see 31.109), consideration may be given to the following:
- (i) Whether scheduled commercial airlines or other suitable, less costly, travel facilities are available at reasonable times, with reasonable frequency, and serve the required destinations conveniently.
- (ii) Whether increased flexibility in scheduling results in time savings and more effective use of personnel that would outweigh additional travel costs.
- (f) Costs of contractor-owned or -leased automobiles, as used in this paragraph, include the costs of lease, operation (including personnel), maintenance, depreciation, insurance, etc. These costs are allowable, if reasonable, to the extent that the automobiles are used for company business. That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is compensation for personal services and is unallowable as stated in 31.205-6(m)(2).

31.205-47 Costs related to legal and other proceedings.

(a) Definitions. As used in this subpart-

"Costs" include, but are not limited to, administrative and clerical expenses; the costs of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; costs of employees, officers, and directors; and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding which bears a direct relationship to the proceeding.

- "Fraud," as used in this subsection, means-
- (1) Acts of fraud or corruption or attempts to defraud the Government or to corrupt its agents,
- (2) Acts which constitute a cause for debarment or suspension under 9.406-2(a) and 9.407-2(a) and
- (3) Acts which violate the False Claims Act, 31 U.S.C., sections 3729-3731, or the Anti-Kickback Act, 41 U.S.C., sections 51 and 54.

"Penalty," does not include restitution, reimbursement, or compensatory damages.

"Proceeding," includes an investigation.

- (b) Costs incurred in connection with any proceeding brought by a Federal, State, local, or foreign government for violation of, or a failure to comply with, law or regulation by the contractor (including its agents or employees), or costs incurred in connection with any proceeding brought by a third party in the name of the United States under the False Claims Act, 31 U.S.C. 3730, are unallowable if the result is—
 - (1) In a criminal proceeding, a conviction;
- (2) In a civil or administrative proceeding, a finding that the contractor violated, or failed to comply with, a law or regulation; [This language stayed indefinitely. Please use paragraph (b)(3) below.]
- (3) In a civil or administrative proceeding, either a finding of contractor liability where the proceeding involves an allegation of fraud or similar misconduct or imposition of a monetary penalty where the proceeding does not involve an allegation of fraud or similar misconduct;
- (4) A final decision by an appropriate official of an executive agency to—
 - (i) Debar or suspend the contractor;
 - (ii) Rescind or void a contract; or
- (iii) Terminate a contract for default by reason of a violation or failure to comply with a law or regulation.
- (5) Disposition of the matter by consent or compromise if the proceeding could have led to any of the outcomes listed in paragraphs (b)(1) through (3) of this subsection (but see paragraphs (c) and (d) of this subsection); or
- (6) Not covered by paragraphs (b)(1) through (4) of this subsection, but where the underlying alleged contractor misconduct was the same as that which led to a different proceeding whose costs are unallowable by reason of paragraphs (b)(1) through (4) of this subsection.
- (c)(1) To the extent they are not otherwise unallowable, costs incurred in connection with any proceeding under paragraph (b) of this subsection commenced by the United States that is resolved by consent or compromise pursuant to an agreement entered into between the contractor and the United States, and which are unallowable solely because of paragraph (b) of this subsection, may be allowed to the extent specifically provided in such agreement

- (2) In the event of a settlement of any proceeding brought by a third party under the False Claims Act in which the United States did not intervene, reasonable costs incurred by the contractor in connection with such a proceeding, that are not otherwise unallowable by regulation or by separate agreement with the United States, may be allowed if the contracting officer, in consultation with his or her legal advisor, determines that there was very little likelihood that the third party would have been successful on the merits.
- (d) To the extent that they are not otherwise unallowable, costs incurred in connection with any proceeding under paragraph (b) of this subsection commenced by a State, local, or foreign government may be allowable when the contracting officer (or other official specified in agency procedures) determines, that the costs were incurred either:
- (1) As a direct result of a specific term or condition of a Federal contract; or
- (2) As a result of compliance with specific written direction of the cognizant contracting officer.
- (e) Costs incurred in connection with proceedings described in paragraph (b) of this subsection, but which are not made unallowable by that paragraph, may be allowable to the extent that:
- (1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action:
- (2) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and
- (3) The percentage of costs allowed does not exceed the percentage determined to be appropriate considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. Agreements reached under paragraph (c) of this subsection shall be subject to this limitation. If, however, an agreement described in paragraph (c)(1) of this subsection explicitly states the amount of otherwise allowable incurred legal fees and limits the allowable recovery to 80 percent or less of the stated legal fees, no additional limitation need be applied. The amount of reimbursement allowed for legal costs in connection with any proceeding described in paragraph (c)(2) of this subsection shall be determined by the cognizant contracting officer, but shall not exceed 80 percent of otherwise allowable legal costs incurred.
- (f) Costs not covered elsewhere in this subsection are unallowable if incurred in connection with:
- (1) Defense against Federal Government claims or appeals or the prosecution of claims or appeals against the Federal Government (see 33.201).

- (2) Organization, reorganization, (including mergers and acquisitions) or resisting mergers and acquisitions (see also 31.205-27).
 - (3) Defense of antitrust suits.
- (4) Defense of suits brought by employees or exemployees of the contractor under section 2 of the Major Fraud Act of 1988 where the contractor was found liable or settled.
- (5) Costs of legal, accounting, and consultant services and directly associated costs incurred in connection with the defense or prosecution of lawsuits or appeals between contractors arising from either—
- (i) An agreement or contract concerning a teaming arrangement, a joint venture, or similar arrangement of shared interest; or
- (ii) Dual sourcing, coproduction, or similar programs, are unallowable, except when—
- (A) Incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer, or
- (B) When agreed to in writing by the contracting officer.
- (6) Patent infringement litigation, unless otherwise provided for in the contract.
- (7) Representation of, or assistance to, individuals, groups, or legal entities which the contractor is not legally bound to provide, arising from an action where the participant was convicted of violation of a law or regulation or was found liable in a civil or administrative proceeding.
- (8) Protests of Federal Government solicitations or contract awards, or the defense against protests of such solicitations or contract awards, unless the costs of defending against a protest are incurred pursuant to a written request from the cognizant contracting officer.
- (g) Costs which may be unallowable under 31.205-47, including directly associated costs, shall be segregated and accounted for by the contractor separately. During the pendency of any proceeding covered by paragraph (b) and paragraphs (f)(4) and (f)(7) of this subsection, the contracting officer shall generally withhold payment of such costs. However, if in the best interests of the Government, the contracting officer may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the contractor to repay all unallowable

costs, plus interest, if the costs are subsequently determined to be unallowable.

31.205-48 Deferred research and development costs.

"Research and development," as used in this section, means the type of technical effort described in 31.205-18 but sponsored by a grant or required in the performance of a contract. When costs are incurred in excess of either the price of a contract or amount of a grant for research and development effort, the excess is unallowable under any other Government contract.

31.205-49 Goodwill.

Goodwill, an unidentifiable intangible asset, originates under the purchase method of accounting for a business combination when the price paid by the acquiring company exceeds the sum of the identifiable individual assets acquired less liabilities assumed, based upon their fair values. The excess is commonly referred to as goodwill. Goodwill may arise from the acquisition of a company as a whole or a portion thereof. Any costs for amortization, expensing, write-off, or write-down of goodwill (however represented) are unallowable.

31.205-50 [Reserved]

31.205-51 Costs of alcoholic beverages.

Costs of alcoholic beverages are unallowable.

31.205-52 Asset valuations resulting from business combinations.

- (a) For tangible capital assets, when the purchase method of accounting for a business combination is used, whether or not the contract or subcontract is subject to CAS, the allowable depreciation and cost of money shall be based on the capitalized asset values measured and assigned in accordance with 48 CFR 9904.404-50(d), if allocable, reasonable, and not otherwise unallowable.
- (b) For intangible capital assets, when the purchase method of accounting for a business combination is used, allowable amortization and cost of money shall be limited to the total of the amounts that would have been allowed had the combination not taken place.

Subpart 31.3—Contracts with Educational Institutions

31.301 Purpose.

This subpart provides the principles for determining the cost of research and development, training, and other work performed by educational institutions under contracts with the Government.

31.302 General.

Office of Management and Budget (OMB) Circular No. A-21, Cost Principles for Educational Institutions, revised, provides principles for determining the costs applicable to

research and development, training, and other work performed by educational institutions under contracts with the Government.

31.303 Requirements.

- (a) Contracts that refer to this Subpart 31.3 for determining allowable costs under contracts with educational institutions shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-21 in effect on the date of the contract.
- (b) Agencies are not expected to place additional restrictions on individual items of cost.

Subpart 31.4—[Reserved]

Subpart 31.5—[Reserved]

Subpart 31.6—Contracts with State, Local, and Federally Recognized Indian Tribal Governments

31.601 Purpose.

This subpart provides the principles for determining allowable cost of contracts and subcontracts with State, local, and federally recognized Indian tribal governments.

31.602 General.

Office of Management and Budget (OMB) Circular No. A-87, Cost Principles for State and Local Governments, Revised, sets forth the principles for determining the allowable costs of contracts and subcontracts with State, local, and federally recognized Indian tribal governments. These principles are for cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in financing a particular contract.

31.603 Requirements.

- (a) Contracts that refer to this Subpart 31.6 for determining allowable costs under contracts with State, local and Indian tribal governments shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-87 which is in effect on the date of the contract.
- (b) Agencies are not expected to place additional restrictions on individual items of cost. However, under 10 U.S.C. 2324(e) and 41 U.S.C. 256(e), the following costs are unallowable:
- Costs of entertainment, including amusement, diversion, and social activities, and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).
- (2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.
- (3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).
- (4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, state, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of

the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations in the FAR or an executive agency supplement to the FAR.

- (5) Costs of any membership in any social, dining, or country club or organization.
 - (6) Costs of alcoholic beverages.
- (7) Contributions or donations, regardless of the recipient.
- (8) Costs of advertising designed to promote the contractor or its products.
- (9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.
- (10) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.
- (11) Costs incurred in making any payment (commonly known as a "golden parachute payment") which is—
- (i) In an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and
- (ii) Is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.
- (12) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.
- (13) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of the severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined by regulations in the FAR or in an executive agency supplement to the FAR.
- (14) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or curtailment of activities at, a United States facility in that country at the request of the government of that country.
- (15) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceedings commenced by the United States or a State, to the extent provided in 10 U.S.C. 2324(k) or 41 U.S.C. 256(k).

Subpart 31.7—Contracts with Nonprofit Organizations

31.701 Purpose.

This subpart provides the principles for determining the cost applicable to work performed by nonprofit organizations under contracts with the Government. A nonprofit organization, for purpose of identification, is defined as a business entity organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings inure to the benefit of any private shareholder or individual, of which no substantial part of the activities is carrying on propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under section 501 of the Internal Revenue Code.

31.702 General.

Office of Management and Budget (OMB) Circular No. A-122, Cost Principles for Nonprofit Organizations, sets forth principles for determining the costs applicable to work performed by nonprofit organizations under contracts (also applies to grants and other agreements) with the Government.

31.703 Requirements.

- (a) Contracts which refer to this Subpart 31.7 for determining allowable costs shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-122 in effect on the date of the contract.
- (b) Agencies are not expected to place additional restrictions on individual items of cost. However, under 10 U.S.C. 2324(e) and 41 U.S.C. 256(e), the costs cited in 31.603(b) are unallowable.

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